



MAYOR AND COUNCIL AGENDA

NO. 8(A) DEPT.: / City Clerk's Office

DATE: July 26, 2004

ACTION: Adoption of Minutes

Meeting No. 36-04 (General Session, July 12, 2004)

Meeting No. 37-04 (Public Hearing, July 19, 2004)

ACTION STATUS:

FOR THE MEETING OF: 8/2/04

INTRODUCED

PUB. HEARING

INSTRUCTIONS

APPROVED

EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER

SECTION

☒ CONSENT AGENDA

RECOMMENDATION: Adoption

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND:

PREPARED BY:

Date

LIST OF ATTACHMENTS: Blue minutes reflecting changes made by the Mayor and Council and the City Attorney.



MAYOR AND COUNCIL AGENDA

NO. 8(B) DEPT.: Information and Technology /

DATE: July 27, 2004

ACTION: Approval of Contract NM9200151/MNA62171

TO: Dell Marketing LP

OF: Austin, Texas

FOR: Computers, servers, computer parts and peripherals

ACTION STATUS:

FOR THE MEETING OF: 8/02/04

INTRODUCED

PUB. HEARING

INSTRUCTIONS

APPROVED

EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER

SECTION

☒ **CONSENT AGENDA**

RECOMMENDATION: Staff recommends approval to purchase up to \$150,000 of computer equipment, servers, and peripherals for the period through December 31, 2004 from Dell Marketing LP of Austin, Texas.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

Sufficient funds are budgeted in account 110-750-0100-0438

BACKGROUND: The City's standardizes on Dell equipment for purchases of servers, PCs and laptops. Dell equipment has proven to be highly reliable and served the City well since the first Dell computers were purchased approximately five years ago. Dell also has an outstanding service organization and will come on site to make repairs and cover warranty related problems.

Approval of this agenda item will allow the City to purchase up to \$150,000 of Dell equipment and peripherals for the period through December 31, 2004.

The Western States Contracting Alliance (WSCA) contract #92-00151 for Dell's entire product line plus peripherals is set to expire on September 2, 2004. WSCA and the National Association of State Procurement Officers (NASPO) and Dell are currently engaged in entering into a new contract, NM9200151/MNA62171 for Dell equipment which will become effective on September 1, 2004 and continue through December 31, 2004. After that period a similar contract is likely to be awarded by the National Association of State Procurement Officers (NASPO).

PREPARED BY:

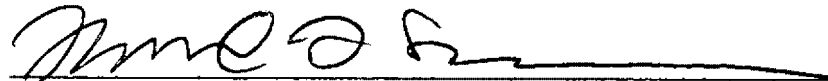

Michael Q. Cannon, Director Information and Technology

CONCUR:

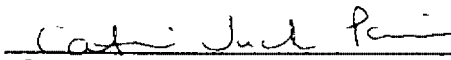

Eileen Morris, Contract Officer

7/27/2004
Date

APPROVE:


Michael Q. Cannon, Director of Information & Technology

7/27/2004
Date


Catherine Tuck Parrish, Acting City Manager

7/28/04
Date

LIST OF ATTACHMENTS: None



MAYOR AND COUNCIL AGENDA

NO. 8(C) DEPT.: Public Works / Environment

DATE: July 28, 2004

ACTION: Rejection of Bid #5-05

FOR: Installation of cathodic protection to Hunting Hill and Carr Avenue water tanks.

ACTION STATUS:

FOR THE MEETING OF: 8/2/04

INTRODUCED
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☒ **CONSENT AGENDA**

RECOMMENDATION:

Staff recommends the Mayor and Council reject all bids received for Bid #5-05.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

Funding is provided in CIP account number 210-850-1A34. The bids received exceed the engineer's estimate by \$57,500 and should be re-bid to produce a more acceptable price.

BACKGROUND:

Bid Distribution: Notification of the bid was mailed to 35 prospective contractors. No Rockville firms provide these services. Bid notification also was posted on the City's Web site.

<u>Bid Received:</u>	George Kountoupes Painting Co	\$106,500.00
	Corrosion Control Corporation	\$119,400.00

Notes on Bid: The bids exceed the engineer's estimate by \$57,500. Staff will re-bid next summer with the hope that contractors may have less workload to obtain a more reasonable price. In addition, the specifications will be modified back to the standard warranty period of ten years to obtain a lower contract price. Further, Tank Industry Consultants (TIC), who designed and prepared the technical specifications for the City, concurred that bid prices are

unreasonably high. TIC is a firm specializing in the design, maintenance, and rehabilitation of water storage tanks.

Project Description: This project involves the installation of a corrosion prevention system, known as cathodic protection, for the City's two steel water tanks, the Hunting Hill and Carr Avenue water tanks. The other tanks, Talbott water tank, was installed with its corrosion prevention system in 2002. The cathodic protection system will increase the longevity of the tanks by reducing corrosion.

Funding: Funds are available in CIP project number 210-850-1A34.

Recommendations: Staff recommends the Mayor and Council reject Bid #5-05 submitted by George Kontoupes Painting Co. at \$106,500 and Corrosion Control Corporation at \$119,400.

PREPARED BY: Edwin Y. Woo
Edwin Y. Woo, PE, Civil Engineer II

7/28/2004
Date

CONCUR: 
Eileen Morris, Contracts Officer

7/28/2004
Date

APPROVE: 
Eugene H. Cranor, Director of Public Works

7/28/04
Date

APPROVE: 
Catherine Tuck Parrish, Acting City Manager

7/28/04
Date

LIST OF ATTACHMENTS:

None



MAYOR AND COUNCIL AGENDA

NO. 8(D)

DEPT.: Community Planning and Development Services
Contact: Scott E. Parker, AICP, Planner III

DATE: July 28, 2004

ACTION:

Preliminary Review and Acceptance for processing of Zoning Ordinance Text Amendment TXT2004-00213, to amend Article XIV of the Zoning Ordinance to add a new section: Section 25-710.28, Preliminary Development Plan Optional Method of Development. Washington Metropolitan Area Transit Authority (WMATA) and Twinbrook Commons, L.L.C. applicants.

ACTION STATUS:

FOR THE MEETING OF: 08/02/04

INTRODUCED

PUB. HEARING
INSTRUCTIONS

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ROCKVILLE CITY CODE,

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SECTION

☐ CONSENT AGENDA

RECOMMENDATION:

Acceptance of the Text Amendment application for processing and referral to the Planning Commission for review and recommendation.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

Impact will be related to the amendment of the Zoning Ordinance, facilitating development of the Twinbrook Metro Station site, commonly referred to as Twinbrook Commons.

BACKGROUND:

The Zoning Ordinance provides for the Mayor and Council to review new text amendment applications to determine if further consideration of the application is appropriate. Those deemed appropriate are referred to the Planning Commission for review and recommendation (Section 25-143(b)). If upon preliminary review of an application, the Mayor and Council "determines that it should not be considered further, a resolution denying the application shall be adopted" (Section 25-143 (a)).

Twinbrook Commons L.L.C. and WMATA have entered into a joint development agreement to develop the 26-acre WMATA owned property at the Twinbrook Metro Station. The applicant is proposing a mixed-use residential, office, and retail transit oriented development. Currently, 15.9 acres of the project are in Montgomery County. The portion of the proposed development within the City is 10.3 acres, with all but 1.77 acres of the City portion on the west side of the CSX and Metro tracks. The 1.77- acre piece within the City of Rockville on the east side of the tracks, is commonly referred to as the Suburban Propane site.

It should be noted that the applicant has filed an annexation petition to incorporate all of the development area currently within Montgomery County into the City of Rockville. It should also be noted that Montgomery County has approved a Preliminary Development plan for the development within the jurisdiction of Montgomery County.

PROPOSAL:

The applicant has requested this text amendment to provide an alternative method of optional development within the RPC zones for large tracts of land located in close proximity to a metro station entrance. The following items are relevant issues associated with the text amendment:

Application

1. Minimum of ten acres
2. Located within 1,200 feet of a Metro station entrance
3. RPC zone

Process

1. Approval of a Preliminary Development Plan (PDP) for the entire site by the Mayor and Council
2. Subsequent approval of Use Permits for individual phases by the Planning Commission

Preliminary Development Plan Approval

1. PDP indicating uses, densities, heights and general locations of uses and roads
2. Trip Reduction Agreement
3. Twelve-year Adequate Public Facilities validity period

Development Standards

1. Residential and commercial uses required, with a minimum of ten percent ground floor retail
2. Maximum commercial density of 1.0 FAR.
3. Maximum heights for residential structures – 170 feet if 300 feet or more from single family detached residential property; otherwise 140 feet
4. Maximum height for commercial structures – 170 feet if 300 feet or more from single family detached residential property; otherwise 110 feet.
5. Setbacks from off-site, single family detached residential units – one foot for every three feet of height.

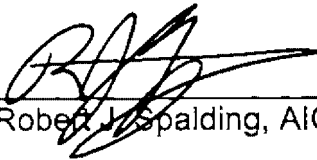
STAFF COMMENT:

Twinbrook Commons and WMATA are applying for this amendment to facilitate development of the Twinbrook Metro site. The provisions within this text amendment will give the applicant the flexibility to accommodate the development commensurate with approvals that are already in place within the County. While a full evaluation of the text amendment and the annexation petition is still pending, staff recommends accepting the text amendment for further processing.

PREPARED BY:

SCOTT PARKER
Scott E. Parker, AICP, Planner III

APPROVE:


Robert J. Spalding, AICP, Chief of Planning

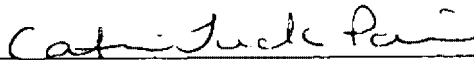
7.28.4

Date


Arthur D. Chambers, AICP, Director of CPDS

7.28.4

Date


Catherine Tuck Parrish, Acting City Manager

7/29/04

Date

LIST OF ATTACHMENTS:

1. Applicant's letter and justification statement
2. Text Amendment

Zoning Text Amendment Statement of Justification

Applicant: Washington Area Metropolitan Transit Authority ("WMATA")
and Twinbrook Commons, L.L.C.

To amend Zoning Ordinance Article XIV to add
a new section: Section 25-710.28 Preliminary Development
Plan Optional Method of Development

I. Introduction

The purpose of the proposed Zoning Text Amendment is to provide an alternative method of optional development within the RPC Zone for large tracts of land that are located in close proximity (1,200 feet) from the entrance to a Metro Station. The Zoning Text Amendment is intended to provide alternative development options and increased flexibility for these properties in an effort to promote successful "Smart Growth" transit oriented development. The Zoning Text Amendment encourages mixed-use developments that provide the appropriate balance of uses, densities, amenities and open space to ensure a successful transit oriented development. The Zoning Text Amendment is intended for potential use at the Twinbrook Metro Station and the area immediately surrounding the Rockville Metro Station.

Twinbrook Commons, L.L.C. and WMATA (the "Applicant") have entered into a joint development agreement to develop the 26 acre WMATA owned property at the Twinbrook Metro Station (the "Property"). Consistent with the 1989 Rockville Pike Corridor Neighborhood Plan and the 2000 Twinbrook Metro Station Area Design Study Charrette, the Applicant proposes a mixed-use residential, office and ground floor retail transit oriented development. The proposed Zoning Text Amendment is intended to facilitate this development.

II. Highlights of the Zoning Text Amendment

The following provides a summary of the Zoning Text Amendment:

A. Application

- Minimum of 10 acres
- Located within 1,200 feet of a Metro Station entrance
- RPC Zone

B. Process

- Approval of a Preliminary Development Plan for the entire site by the Mayor and Council
- Subsequent approval of Use Permits for individual phases by Planning Commission

C. Preliminary Development Plan Approval

- Preliminary Development Plan indicating uses, densities, heights and general locations of uses and roads
- Trip Reduction Agreement
- Twelve-year Adequate Public Facilities Validity Period

D. Development Standards

- Residential and commercial uses required, with a minimum of ten percent ground floor retail
- Maximum commercial density of 1.0 FAR
- Maximum heights for residential structures – 170 feet if 300 feet or more from single family detached residential property; otherwise 140 feet
- Maximum height for commercial structures – 170 feet if 300 feet or more from single family detached residential property; otherwise 110 feet
- Setbacks from off-site single family residential detached units – one foot for every three feet of height

III. Justification

The Zoning Text Amendment is applicable only to those large sites immediately adjacent to the Metro Station and would be available for the development of the WMATA owned property adjacent to both the Twinbrook Metro Station and the Rockville Metro Station. Recognizing that the development of WMATA owned property presents certain challenges and restrictions that typically do not exist in privately owned property, the Zoning Text Amendment provides increased flexibility both in terms of process and substance.

In terms of process, the Zoning Text Amendment requires a Preliminary Development Plan to be approved by the Mayor and Council as the first step in the development process, prior to obtaining individual use permits for the separate phases of the project. The requirement for a Preliminary Development Plan provides the Mayor and Council with an opportunity to review, in a comprehensive manner, the overall project in terms of proposed uses, densities, heights and general location. The ability to establish the general parameters of the development initially through the Preliminary Development Plan process provides both the

applicant and the City with the ability to plan these areas in a more comprehensive nature instead of in a piece-meal approach.

The Zoning Text Amendment is also intended to manage expectations of the City and the applicant upfront by identifying in connection with the approval of the Preliminary Development Plan, the extent of an applicant's traffic mitigation obligations. Similarly, and unlike other Preliminary Development Plan provisions in the Zoning Ordinance, the Zoning Text Amendment proposes an adequate public facilities validity period – in this case a period of twelve years, within which the development must be completed. This provision is intended to address concerns previously addressed by the Mayor and Council with respect to languishing projects or projects that were approved without sufficient mitigation obligations.

The Zoning Text Amendment provides flexibility with respect to the existing RPC development standards. Perhaps most importantly is the way in which commercial density is addressed. While the RPC Zone currently permits a maximum density of 1.5 FAR, the Zoning Text Amendment reduces this to 1.0 FAR. At the same time however, it provides needed flexibility with respect to the location of the commercial density. The density is calculated based on the Preliminary Development Plan area, but may be concentrated within a given area of a site. The ability to locate the commercial density in specific areas recognizes that certain site areas (i.e. those closest to a Metro Station, fronting major roadways, in proximity to existing commercial uses) may be most appropriate for a commercial use. This provision also recognizes that in some cases, certain transportation related infrastructure, such as Metro related commuter parking garages, may preclude locating commercial uses in certain areas.

An important component of the Zoning Text Amendment is the increase in the recommended maximum height limits for commercial and residential structures. The Zoning Text Amendment is only applicable within close proximity to a Metro Station. The presence of the Metro Station establishes the foundation for a "place" and an increase in the allowable heights is intended to promote identifiable, sustainable communities with their own identity. The proposed heights are comparable, but less than the heights of existing buildings at most red-line Metro Station locations in Montgomery County.¹ In the case of the Twinbrook Metro Station, the proposed heights are intended to be visible from Rockville Pike and yet at the same time, respectful of the surrounding community. To this end, the Zoning Text Amendment limits the height of commercial and residential buildings within 300 feet of a single family detached residential property and provides the Mayor and Council with the opportunity to review a shadow study in connection with the Preliminary Development Plan.

¹ Existing heights at red-line Metro Stations include: Bethesda (18 stories); Grosvenor (18 stories); White Flint (20 stories); Rockville (18 stories).

The Zoning Text Amendment addresses the issue of parking in two respects. First, the Zoning Text Amendment recognizes that commuter parking for the Metro Station is different than other parking, and in particular, retail parking. In the case of retail parking, different vehicles are pulling in and out of parking spaces on a continuous basis throughout the course of a day, as compared to commuter parking, where spaces are typically occupied by the same vehicle all day long. Given that the commuter parking experiences considerably less activity, the Zoning Text Amendment revises the parking space and drive aisle standards for commuter WMATA parking garages. The proposed standards are based on WMATA's engineering standards that WMATA has developed and adjusted over the years to provide a safe and convenient commuter parking facility. The second parking related component of the Zoning Text Amendment relates to the parking schedule for transit oriented development multi-family residential units. Recognizing that many residents choose to live at Metro Station locations for the very reason that they do not own a vehicle and rather would prefer to rely upon public transportation, the Zoning Text Amendment provides slightly reduced minimum parking requirements for multi-family units within 1,200 feet of a Metro Station.

IV. Conclusion

The purpose of the Zoning Text Amendment is to promote transit oriented development within close proximity of one of the most valuable City resources. The Zoning Text Amendment will allow for the comprehensive evaluation of such developments and provide the necessary flexibility to ensure the development of sustainable communities.

For the reasons provided herein, we respectfully request your support of the proposed Zoning Text Amendment.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Patricia A. Harris

Amend Article XIV Rockville Pike Corridor Area to add new section as follows:

Sec. 25-710-28. Preliminary Development Plan Optional Method of Development.

Use of the Preliminary Development Plan optional method of development is a voluntary option and an alternative to Section 25-710.27 for large tracts of land in the RPC Zone located within close proximity to a WMATA Metro Station, where multiple buildings are planned to be developed over a long period of time. The Preliminary Development Plan Optional Method is intended as an alternative to the optional method set forth in Section 25-710.27. Submission of an application under the optional method commits the applicant to a greater degree of development control authority by the Mayor and Council. The Mayor and Council may grant additional building height and flexibility where a development complies with more extensive standards of urban design review and traffic impact review and mitigation. Any development that receives approval may exceed the normal building height and F.A.R. specified in Table III contained in Section 25-311 of this chapter, provided that in no event shall the resulting building exceed the maximum height and F.A.R. specified in this section. Developments submitted for approval under the optional method of development shall be subject to the following additional modifications and requirements:

(1) All land processed under this Preliminary Plan Optional Method must be located within 1,200 feet of a main pedestrian portal of a WMATA Metro Station;

(2) A minimum area of ten (10) acres shall be required for applications under the Preliminary Development Plan Optional Method;

(3) All applicants shall prepare and submit a traffic impact study and shall provide mitigation of traffic impacts which may be acceptable to the Mayor and Council. All traffic mitigation efforts and traffic obligations to be required by an applicant shall be identified in full at the time of Preliminary Development Plan approval. For purposes of this Section, a determination of adequate public facilities is timely and remains valid for twelve (12) years from the date of the approval of a Preliminary Development Plan. The Mayor and Council may extend the validity period of the adequate public facilities determination prior to its expiration for good cause, taking into consideration the extent to which the project is completed and the degree of development activity that has occurred within four years of the extension request;

(4) All developments shall comply with the urban design review process for the Rockville Pike Corridor Area as contained in the Plan in connection with Use Permit approval;

(5) All buildings abutting off-site residential land developed with single family detached units shall provide a minimum side and rear set back of one (1) foot for every three (3) feet of height;

(6) The Preliminary Development Plan area must contain a mix of uses, including residential and commercial components. Ground floor retail uses must be provided in at least ten percent of the Preliminary Development Plan areas' ground floor space that has street frontage. Nothing herein shall preclude parking structures from occupying ground floor space, provided that at least 70 percent of the street frontages of all of the parking facilities within the Preliminary Development Plan area are concealed by a separate occupiable building. For purposes of this subsection, the 70 percent calculation shall be based on the total street frontage of all parking structures. The Mayor and Council may authorize modification to this use requirement where the strict application would result in practical difficulty or unnecessary hardship upon the owners. Developments shall not be subject to the use requirements of Section 27-710.21;

(7) All developments shall provide a system of public pedestrian ways linking elements of the development with neighboring properties and the WMATA Metro Station;

(8) Additional heights may be authorized, as follows: 1) commercial building height of one hundred ten (110) feet, except that a maximum of one hundred seventy (170) feet may be permitted for a commercial building located at least 300 feet from a single family detached residential property; and 2) additional residential building height of one hundred forty-five (145) feet; except that a maximum of one hundred seventy (170) feet may be permitted for a residential building located at least 300 feet from a single family detached residential property.

(9) All developments that provide right-of-way or easements for public streets or pedestrian ways may include the area of such right-of-way or easements in the net development area for the purpose of calculating F.A.R.;

(10) Development densities may be shifted within the Preliminary Development Plan gross tract area but in no event shall the commercial F.A.R. as calculated based on the gross tract area exceed 1.0 F.A.R.;

(11) Optional method approval shall be as provided for in Section 25-683 herein, except that the Mayor and Council and not the Planning Commission shall be the sole authority with respect to the final approval of the RPC Preliminary Development Plan Optional Method, upon recommendation by the Planning Commission. All Use Permits within the Preliminary Development Plan area shall be approved by the Planning Commission;

(12) Within the Preliminary Development Plan area, the office and retail parking space quantity requirements governing the Rockville Pike Corridor Area as set forth in Section 25-710.27(a) shall apply. The parking space requirements for all other uses shall be as provided for in Section 25-395, except the minimum parking space requirements for residential uses for multi-family dwelling units shall be as follows: For each dwelling unit with one separate bedroom or less, one (1) space; for each dwelling unit with 2 separate bedrooms, one and one quarter (1¼) spaces; for each dwelling unit with 3 or more separate bedrooms, two (2) spaces;

(13) Parking required in connection with the approval of a Use Permit need not be located within the boundaries of the subject Use Permit but must be located within the Preliminary Development Plan area;

(14) All developments shall be subject to the parking design standards set forth in Article IX, Division 2, except that the parking space design standards for parking spaces within a WMATA controlled garage intended for Metro Station commuter parking shall be governed by the design standards approved and adopted by WMATA as follows:

(a) Each automobile parking space shall be a rectangle not less than eight and one-half (8½) feet wide and eighteen feet long;

(b) The width of interior driveways shall not be less than twenty-four (24) feet when used with seventy (70) to ninety (90) degree angled parking;

(15) Shadow studies generally based on the methodology set forth in the Rockville Pike Neighborhood Corridor Plan shall be approved by the Mayor and Council in connection with its approval of the Preliminary Development Plan and shall seek to minimize the impacts of shadows on surrounding off-site single-family residential units;

(16) All developments that abut Rockville Pike shall provide a landscaped berm, walkway, splash block treatments and building landscaping along the Rockville Pike frontage in substantial accordance with the Rockville Pike Streetscape guidelines contained in the Plan.

(17) The Mayor and Council may, in connection with the approval of a Preliminary Development Plan, approve housing for the elderly and physically handicapped. Such approval by the Mayor and Council shall eliminate the requirement to obtain special exception approval for housing for the elderly and physically handicapped as provided for by Section 25-296.



MAYOR AND COUNCIL AGENDA

NO. 8(E)

DEPT.: / Community Planning and Development Services

DATE: July 29, 2004

Contact: Arthur D. Chambers, AICP, Director, CPDS

ACTION: Approval of contract for design services for the Cultural Arts Building.

To: WDG Architecture

Of: Washington, DC

Amount: Not to exceed \$370,000.

ACTION STATUS:

FOR THE MEETING OF: 8/2/06

INTRODUCED

PUB. HEARING

INSTRUCTIONS

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ROCKVILLE CITY CODE,

CHAPTER

SECTION

☐ CONSENT AGENDA

RECOMMENDATION: Authorize the Acting City Manager to sign a contract for design services with WDG Architecture for design services for the Cultural Arts Building.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

The cost of this project is estimated to be \$370,000. Sufficient funding is available in the Account No. 420-600-0A80-0426.

BACKGROUND:

The Cultural Arts Building (CAB) is located in Block 3A adjacent to the library's west side. It will be at the southeast corner of Beall Avenue and the new Commerce Street. The CAB has not been designed nor has it gone through the use permit process. However, the building foot print has been established by the location of the library and Commerce Street. The actual design of the building will be accomplished by the awarding of this contract.

The design process will involve a design development phase, which will provide for input from the Mayor and Council, Rockville Arts Place representatives and staff. Given the direction from the Mayor and Council on July 26 to include a fourth floor, the proposal will need to be revised. Additional revisions will be needed to include extra conceptual design meetings. Those revisions will result in an increased cost for design. These revisions are not in the original proposal from WDG. Therefore, a revised proposal will need to be prepared to include those items.

The scope also provides for obtaining use permit approval. After the use permit has been approved,

design documents and construction documents will be prepared. WDG would continue to be involved through construction. A more detailed schedule will also be developed over the next few weeks.

Design of the CAB will include design of the shell of the retail shell on the street level. The retail area as set forth in the GDA is 9,500 square feet. That square footage is approximately 20% of the approximately 50,000 square feet (four floors) building. Federal Realty will pay for their proportionate share of the \$370,000 design cost (\$70,000 - \$75,000). They will then pay their proportionate share of the construction cost for the shell.

Staff would recommend that the Acting City Manager be authorized to enter into a contract with WDG Architecture in an amount not to exceed \$370,000. That amount should be sufficient to pay for the increased scope of work, provide for reimbursable expenses, and a contingency if additional redesign work is needed. The contract will be prepared and executed by mid-August. That will allow the design to begin in September and be completed in December 2004 or January 2005. Then the construction documents can be prepared so construction can begin in Summer 2005.

Sections 17-85 and 17-88 of the City Code allows the City to utilize a special procurement procedure if the Mayor and Council make a written determination that a unique or unusual circumstance exists that makes competitive procurement process contrary to the City's interest. There must be a written record of the reasons justifying the special procurement.

Therefore, approval of this agenda item will also include a finding by the Mayor and Council that the public/private nature of the Town Square project, the City's contractual obligations to comply with the terms of the amended and restated GDA (approved June 2004), the October 2003 MOU between the City and County and the mixed use buildings create unique and/or unusual circumstances. These factors make the typical competitive procurement process contrary to the City's interest and justifies the special procurement procedure. It also will allow the Town Square to be completed on time.

PREPARED BY:

Arthur D. Chambers / cc
Arthur D. Chambers, AICP, Director, CPDS

APPROVE:

Catherine Tuck Parrish
Catherine Tuck Parrish, Acting City Manager

7/29/04
Date

LIST OF ATTACHMENTS:

1. Proposal from WDG Architecture.



February 11, 2004

WDG Architecture, PLLC
1005 Connecticut Avenue NW
Suite 300
Washington DC 20036-3404
Tel 202 847 0110
Fax 202 443 2198
e-mail wdg@wdgarch.com
www.wdgarch.com

Attn: Mr. Donald T. Briggs
Director of Development

Federal Realty Investment Trust
1626 East Jefferson Street
Rockville, MD 20852-4041
Fax: 301.998.3705 (8 pages)

Principal
Marilyn Robinson AIA
Bryan B. Reed AIA
Robert L. Baker AIA
Michael D. Davis AIA
C. P. Gentry Davis AIA
David J. Hinkle AIA
Frederick B. Hargrave AIA
Eric J. Liskowski AIA
Jeffrey A. Adams AIA
Mark D. Hargrave AIA
Director
Marilyn S. Hargrave
William C. Hargrave AIA

RE: Project Proposal for architectural services related to Rockville Cultural Arts Center

Dear Don:

As requested, we are pleased to submit our attached proposal to provide architectural and engineering services for the proposed Rockville Cultural Arts Center.

This opportunity to serve you is one that we value, and we very much look forward to making this project an extraordinary product. Thank you!

Regards,

A handwritten signature in black ink, appearing to read 'Buddy Woerner', with a long horizontal line extending from the end of the signature.

Buddy Woerner, AIA
Associate
WDG Architecture, PLLC

CC: DD/EL/GD, WDG

ROCKVILLE CULTURAL ARTS CENTER FEBRUARY 11, 2004

The following shall constitute our proposal to provide professional services as required to develop and construct a 3-story cultural arts center in Rockville, Maryland.

PROJECT DESCRIPTION

The Project, as we understand it, will be a 3-story building of approximately 36,470 gross square feet. Included in the project is street level retail with loading dock, and 2 floors of open plan space for future artist studios each with an approximate 16' floor to floor, plus the required mechanical penthouse area. The design will include one main entrance and elevator lobby area.

As requested, the project will be delivered in two phases. The phase one work will include architectural, structural, mechanical, plumbing and electrical work to complete a warm dark shell on the second and third floors with a cold dark retail shell on the first floor. The phase two work will include perimeter gypsum wallboard and insulation, gypsum wallboard column covers, lighting, perimeter power and HVAC distribution for the second and third floors to create a "white box". Also included in phase two will be a bathroom core to be coordinated with the layout of the future tenant studios on the second and third floors.

The Project will be constructed at the intersection of Beall Avenue and a future street known today as Market Street, on a site immediately adjacent to the proposed public library, identified as Block 3A and will be within what is envisioned as the downtown core of a revitalized Rockville Town Center.

SERVICES INCLUDED

Professional services provided for in this proposal are architectural, structural, mechanical, plumbing and electrical as necessary to develop the Project base building and subsequent phase two work as described above. Other consultants that may be required or requested including: civil engineers, specialty lighting design, building security, elevator, interior design, landscape design, permit processing, etc. shall contract directly with the Owner. WDG will coordinate with the work of these consultants. We will be pleased to assist you in defining and procuring those appropriate to the project at your request.

Professional services will be divided into phases as follows:

1. Use Permit Approval Process:

The first phase of the design process will be to prepare a design package for the project described under this contract, in preparation for submission to the City of Rockville for the Use Permit application and approval. The basis for this submission will be the Rockville Town Center Design Guidelines dated May 15, 2003 and Proposed

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Architectural Elevations and Finish Materials prepared by Street-Works dated July 18, 2003, and related planning data.

It is noted that the Use Permit normally requires significant submissions that are Civil engineering in nature, and also normally requires the work of a landscape architect as a part of the submission requirements. It is assumed that these items will be provided in a collaborative manner by the Federal Realty Investment Trust (FRIT) consultant team upon whose work we can rely.

A. Pre-submission planning and design process

1. Initially, the WDG team will assist the FRIT team in the conceptual design stage of the project.
2. Based on analysis of site constraints, including topography, height and zoning parameters, WDG will proceed to refine the conceptual plans to reflect specific FRIT program requirements.
3. Based on the consensus direction for the plan, a preliminary design package including building massing, floor plan configuration, and program delineation will be developed for further review and owner approval.
4. With the client preferred plan in hand, initial meetings will be scheduled with the City of Rockville staff to present our initial concepts and to gauge initial reaction by staff to the plan's concepts and assumptions.

B. Use Permit Plan

Based on the City Staff's comments and the resulting client approved concept plan approach, the Use Permit submission documents will be prepared. This process will include refinement of the plan and generally establish all massing and design parameters for the project.

During the review and approval of this submission there may be informal meetings with interested parties such as citizen groups, as well as City technical staff, and a formal hearing before the Planning Board. The time line for this process should be from 45 to 60 days. WDG has included attendance at the required presentations during this period, as well as requested revisions to the plan package as agreed to by the FRIT team.

We believe that approval will require the following items from the WDG team:

- a. Illustrative site plan
- b. Dimensioned floor plans

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- c. Elevations illustratively rendered
- d. Through sections
- e. Façade material designations
- f. Area calculations

It is also anticipated that as tools for gaining Use Permit approval, the following visual tools will be required:

1. Mass Model in enough detail to define building proportion and scale.
2. Two sketch 3-dimensional renderings for architectural character.

Note: unit prices for these items are included in the fees portion of the proposal.

2. Schematic Design:

Based on the approved Use Permit package, schematic design documents will be produced which further define the building configuration and function in accordance with the program. During this phase preliminary structural and mechanical systems will be outlined and incorporated into the preliminary layouts. At this point WDG will cooperate with the Owner's cost advisor in the development of a preliminary statement of probable construction cost and a construction budget.

3. Design Development:

Based on the schematic design approved by the Owner, WDG will proceed to develop documents that define the building's character and function in detail. During this phase mechanical, electrical and structural systems will be selected and refined. Materials will be selected and an outline specification prepared that will be adequate for the preparation of preliminary cost estimates and a construction budget.

Documents to be prepared shall be 1/8"=1'-0" floor plans and elevations, cross sections, typical wall sections and schematic engineering plans for building systems.

It is understood that retail tenant space planning, interior fit-out and storefronts are to be completed by others. Also, for purposes of coordinating the bathroom core location, it is understood that Federal Realty Investment Trust will provide the programming and space planning of the second and third floor studio spaces, completed by others, to WDG.

4. Construction Documents, Bid/Negotiation:

Upon owner's instructions, construction documents for the building will be prepared that will enable the Project to be competitively bid, permitted and constructed.

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In process construction drawings will be printed at 35%, 75% and 95% for coordination and review. A final printing "for bid" will be made at 100%. Response to comments and questions received during the bid process will be through addenda, which will subsequently be incorporated into the construction documents. These revised documents will then be reprinted and issued "for construction". As part of basic services, timely value engineering suggestions by the Owner's cost consultant will be incorporated into contract documents up to 75% completion of construction documents. In addition, WDG and its consultants will cooperate with the construction contractor for coordination of minor post bid value engineering items. Items, which involve major drawing and specification revisions, will be considered additional services.

Plans will be prepared ready for filing for construction permit by owner's agent. Required revisions to the drawings resulting from agency review comments will be incorporated as required. Permit expediting services, including filing of the base building design documents with the Building Department will be considered additional services, and can be provided by WDG's in house expeditor if requested.

5. Construction Phase Services:

WDG and its consultants will review architectural, structural, mechanical, plumbing and electrical shop drawings for conformance with the design intent. WDG will make periodic site visits during construction to monitor the progress and quality of the work and attend monthly progress/requisition meetings. Such site visits shall be limited to one visit per month. For the purposes of this proposal the period of construction is considered to be no more than 8 months commencing with the award of the initial Contract for Construction. WDG will also respond to legitimate contractor requests for information (RFI's), review change order requests, prepare a final punch list and make one final walk through to confirm resolution of punch list items. Visits required to rectify missing or unincorporated plan information will be provided as required.

The civil engineer, landscape architect and other special consultants will be responsible for construction administration for their segments of the work.

It is noted that in the City of Rockville, certain structures will require critical inspections including close-in inspections. These are in addition to the normal construction administration services. It is assumed that this project will require this service. We have included an estimate for WDG to provide these services as an additional service under the Fee section of this proposal. It may be that FRIT would prefer to engage a third party inspection service for this effort. We would be pleased to advise you on qualified firms to be considered.

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FEBRUARY 11, 2004**FEES**

We propose to provide architectural and engineering services for the fees listed below. The structural engineer is to be SK&A, and the mechanical, plumbing and electrical engineer is to be GHT Limited.

1. Use Permit approval process: (est.) \$45,000

It is noted that WDG time for this phase of the work will be charged on an hourly, not to exceed, reimbursable basis. Budget dollars not spent will be credited to Owner.

2. Phase One Work:

- | | | |
|----|---------------------|-----------------|
| a. | Architectural: WDG: | \$175,000 |
| b. | Structural: SK&A: | \$28,000 |
| c. | MEP: GHT Limited: | <u>\$36,280</u> |

Subtotal Phase One: \$239,280

3. Phase Two Work:

- interior*
- | | | |
|----|---------------------|-----------------|
| a. | Architectural: WDG: | \$25,000 |
| b. | MEP: GHT Limited: | <u>\$44,000</u> |

Subtotal Phase Two: \$69,280

Total Fee Phase One and Phase Two: \$278,560

4. Optional unit prices:

- | | | |
|----|--|----------|
| a. | Sketch renderings at Use Permit: \$1,500 each x 2 (est.) = | \$3,000 |
| b. | Mass Model at Use Permit: | \$2,000 |
| c. | Architectural critical structures inspections: hourly (est.) | \$15,000 |
| d. | Permit filing and expediting: Hourly | |

ROCKVILLE CULTURAL ARTS CENTER
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The above noted fee for Construction Phase Services assumes construction will start no later than September 1, 2006. If through no fault of the Architect construction is delayed we reserve the right to renegotiate the fee for this phase of the work.

PAYMENT OF FEES

Fees will be billed for the appropriate percentage of completed work according to categories indicated in the table shown above.

ADDITIONAL SERVICES

The following are not included in the preceding fees but can be provided as additional services if requested.

1. Perspective renderings.
2. Value engineering changes requested after 75% completion of the construction documents.
3. Project related electronic information requested other than the one time provided at the end of Construction Document Phase.
4. Permit filing, tracking and expediting.
5. Additional site representation beyond the standard WDG representative visit to the site 1 time per month.
6. Project-related images, boards, exhibits, etc. as may be necessary to accommodate Owner's needs, except as noted above. Fees for such services will be billed on an hourly basis in accordance with normal hourly rates plus reimbursable expenses.
7. Any progress printing provided beyond Basic Services, as requested by the Owner, will be provided as an additional service. Fees for such services shall be based on hours expended times the Architect's/consultant's hourly rates plus reimbursables.
8. Coordination with tenant fit-out work and space planning or interior design of tenant spaces.
9. Coordination with interior design and interior design of spaces not included in the scope of WDG's services including retail tenant and studio tenant spaces.
10. Coordination of building security beyond base building.
11. Coordination with graphic and signage or design of graphics and signage.

Fees for additional architectural services will be based on hours expended times WDG's normal hourly rates or shall be lump sums as negotiated. Fees for consultants contracted direct to WDG shall be cost to WDG times 1.1.

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REIMBURSABLE EXPENSES

1. The design team proposes that we utilize the owner's direct account with their selected printer, for reproductions and deliveries, if requested. Otherwise reimbursable expenses will be billed at 1.1 times cost. These include all costs of reproduction and delivery, professional renderings and models, computer animations, additionally requested special consultants, out of area travel, long distance communication, and ordinary out of pocket costs.
2. Hourly reimbursible charges will be calculated as follows:
 - a. Employees - 2.85 x Direct Personnel Expense (DPE)
 - b. Principals - \$200.00/hour

TERMS

Invoices will be submitted monthly for work completed during the preceding month and will be due within 30 days. In no event will an invoice be allowed to exceed 60 days in arrears from the date of invoice. If upon notification of delinquency, all arrearages are not paid in full immediately, we will suspend work on the Project pending full payment of such outstanding accounts.

If the general terms of this proposal are acceptable please sign and return one copy to be used as an interim agreement pending preparation of a definitive contract. If acceptable, this proposal will form an attachment to an AIA B-151, Standard Form of Agreement Between the Owner and the Architect.

Sincerely,



M. Durwood Dixon, AIA
Principal
Weihe Design Group, PLLC

Accepted

Date

WDG Architecture, PLLC

1025 Connecticut Avenue, NW, Suite 300, Washington, DC 20036

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MAYOR AND COUNCIL AGENDA

NO. 8(F) DEPT.: / Community Planning and Development Services DATE: July 26, 2004
Contact: Arthur D. Chambers, AICP, Director, CPDS

ACTION: Approval of contract for sale of the library site to Montgomery County for the Rockville Regional Library in the Town Square Project.

ACTION STATUS:

FOR THE MEETING OF: 8/2/04

INTRODUCED
PUB. HEARING
INSTRUCTIONS
APPROVED
EFFECTIVE

ROCKVILLE CITY CODE,
CHAPTER
SECTION

☐ CONSENT AGENDA

RECOMMENDATION: Approval of contract subject to City Attorney's approval as to form.

IMPACT: ☐ Environmental ☒ Fiscal ☒ Neighborhood ☐ Other:

Allows the County to construct a regional library as part of the Town Square Project. The City will receive \$2,317,650 from the County for the site and \$170,000 for extension of utilities and other site preparation costs.

BACKGROUND: In December 2003, the City and County approved a Memorandum of Understanding (MOU) regarding the redevelopment of Town Center. One of the provisions was the sale of a site to the County for the Rockville Regional Library. The MOU sets forth general terms for the sale of the site.

Now that the City has awarded the construction contract for the public improvements within Town Square, the pad for the library can be prepared. In addition, the final dimensions of the library site have been determined as part of the subdivision process. The site is Lot 21, Block B. The MOU stated that the purchase price would be \$50 per square foot of the site. Lot 21, Block B is 46,353 square feet. Thus, the purchase price is \$2,317,650. In addition, the County will be making a payment of \$170,000 toward the extension of the site and other pad preparation work.

Closing will occur when the pad work is completed by the City. The pad work basically includes grading the site, removing some soil, compacting the site, etc. It is anticipated that closing will occur

prior to the next general session of the Mayor and Council. Other provisions in the contract relate to staging, insurance, warranties, etc.

PREPARED BY:

Arthur D. Chambers
Arthur D. Chambers, AICP, Director, CPDS

APPROVE:

Catherine Tuck Parrish
Catherine Tuck Parrish

7/28/04
Date

LIST OF ATTACHMENTS:

1. Contract for Sale of Library Site.
2. Plat of Lot 21, Block B.

LIBRARY SITE CONTRACT OF SALE

THIS LIBRARY SITE CONTRACT OF SALE ("this Contract") is made and entered into as of July __, 2004 (the "Effective Date"), by and between THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, a body politic of the State of Maryland ("Seller"), MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland ("Buyer").

EXPLANATORY STATEMENT

A. Seller is the owner of Lot 21 as shown on the Plat of Subdivision ("Subdivision Plat") entitled "Lots 19, 21, 22 & Outlot A, and Parcel B, Block B and Street Dedication: North Maryland Avenue, City Center," which plat was recorded among the Land Records of Montgomery County, Maryland on June 15, 2004 in Plat Book No. 22892 ("Property").

B. Buyer desires to acquire the Property to enable Buyer to construct the Rockville Regional Library.

C. Pursuant to the foregoing, Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer, all on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the foregoing Explanatory Statement, the mutual promises and covenants contained in this Contract, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of Seller and Buyer, Buyer and Seller hereby agree as follows:

1. DEFINITIONS.

Wherever used in this Contract, the following terms shall have the meanings set forth below:

"Business Day" means Monday through Friday excluding holidays recognized by the Maryland state government.

"Closing" means the consummation and closing of the purchase and sale contemplated in this Contract.

"Closing Date" means the *earlier* to occur of (a) five (5) Business Days after Seller notifies Buyer that Seller has completed the Pad Work, or (b) September 30, 2004.

"County Library" means the new Rockville Regional Library together with ancillary office space.

"Effective Date" has the meaning ascribed to that term in the first paragraph of this Contract.

"Environmental Law" means any federal, state, or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to any Hazardous Substance or environmental matter and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; The Clean Water Act, 33 U.S.C. § 1344, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*; and any other federal, state, or local environmental statutes, and all rules, regulations, orders, and decrees now existing under any of the foregoing and that are applicable to the Property.

"Governmental Body" means any federal, state, municipal, or other governmental or quasi-governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

"Hazardous Substances" means any chemical substance: (A) that is or becomes defined as a "hazardous substance," "hazardous waste," "solid waste," "hazardous material," "pollutant," "contaminant," or "toxic," "explosive," "corrosive," "flammable," "infectious," "radioactive," "carcinogenic," or "mutagenic" material or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law, including, but not limited to, asbestos and asbestos-containing materials and gasoline and other petroleum products (including crude oil or any fraction thereof); (B) without limitation, which contains gasoline, diesel fuel, or other petroleum hydrocarbons; (C) without limitation, which contains polychlorinated biphenyls or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or (D) without limitation, radon gas.

"Legal Requirement" means all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, and similar items, of every Governmental Body pertaining to the use, operation, and existence of the Property.

"Lien" means any mortgage, security deed, lien, judgment, pledge, conditional sales contract, security interest, past-due taxes, past-due assessments, or similar encumbrance against the Property of a monetary nature, except any of such arising out of actions of Buyer.

"Pad Work" means that work to be done to prepare the Property for construction of the County Library as such work is described in the Memorandum of Understanding between Seller and Buyer dated October 23, 2003 (the "**MOU**").

"Permits" mean all licenses, permits, approvals, and certificates used in or relating to or required by a Governmental Body or by any applicable law, code, or regulation in connection with the ownership or operation of any part of the Property.

"Permitted Exceptions" means, subject to Buyer's rights to review and make objection to the status of title and the Survey as set forth in this Contract, each of the following: (a) any applicable real estate taxes and assessments, both general and special, not yet due and payable as of the Closing Date; (b) subdivision regulations and all other Legal Requirements affecting the Property; (c) matters that would be shown by a Survey or physical inspection of the Property; and (d) any other title matters of record of the Effective Date.

"Property" means that certain tract or parcel of land in Montgomery County, Maryland containing 46,353 square feet as shown on the Subdivision Plat, together with all rights, rights of way, easements, appurtenances, in any manner belonging to, or pertaining to such tract or parcel of land, and all right, title, and interest, if any, of Seller in and to any and all strips and gores of land located on the Property, and in and to any roads, streets, and ways, public or private, open or proposed, in front of or adjoining all or any part of the land and serving the land, and all rights of Seller (if any, and only to the extent assignable) to development of the land granted by Governmental Bodies having jurisdiction over the Property.

"Purchase Price" means an amount equal to Two Million Four Hundred Eighty-Seven Thousand Six Hundred Fifty Dollars (\$2,487,650), which amount is comprised of the following elements: (a) One Hundred Seventy Thousand Dollars (\$170,000), plus (b) an amount equal to Two Million Three Hundred Seventeen Thousand Six Hundred Fifty Dollars, which amount represents the product of Fifty Dollars (\$50) multiplied by the square footage of the Property as shown on the Subdivision Plat (i.e., 46,353). The Purchase Price shall be payable in the manner described in this Contract, subject to adjustments as provided in this Contract.

"Survey" means the survey entitled "ALTA/ACSM Land Title Survey, Parcels 1 Thru 7, Rockville Town Square, P. No. 5075 & P. No. 21142, L. 15384 F. 720, L. 3568 F. 13, L. 4007 F. 132," dated May 2004 and prepared by Macris, Hendricks & Glascock, P.A.

"Title Company" means Commercial Title Group, Inc., having an address at 8605 Westwood Center Drive, Suite 200, Vienna, Virginia 22182, Attn: Barbara Blitz.

2. PURCHASE AND SALE; DATE AND LOCATION OF CLOSING.

Buyer shall purchase from Seller, and Seller shall sell to Buyer, indefeasible fee simple title to the Property. The purchase and sale of the Property shall be on the terms and conditions hereinafter set forth. The Closing shall be held at 10:00 a.m. local time, on the Closing Date at the offices of Seller's counsel or at such other time or such other place as may be mutually agreed by the parties.

3. REVIEW.

3.1 Various Materials. Between the Effective Date and the Closing Date, Seller shall provide Buyer access during ordinary business hours to the non-proprietary documents, agreements, and other information relating to the Property in Seller's possession or control, including, but not limited to, all soils reports for the Property and engineering studies relating to completed projects at the Property and all Phase I and Phase II Environmental Reports pertaining to the Property. Buyer shall have the right, at its expense, to make copies of any such documents, agreements, and other information.

3.2 Due Diligence Activities. Between the Effective Date and the Closing Date, Buyer and its agents shall have the right, at Buyer's sole risk and expense, to enter the Property, to make such examinations of the Property, the operation thereof, and all other matters affecting or relating to this transaction or the use of the Property as Buyer deems necessary in its sole judgment, including, but not limited to, surveys, engineering studies and analyses, soil tests, investigations of title, survey, zoning, subdivision, and environmental condition of the Property, and all other desired due diligence investigations, sampling, tests, and studies for the Property. Notwithstanding the foregoing, (a) Buyer shall provide Seller and FRIT not less than forty-eight (48) hours' prior written notice of any invasive testing to be performed by Buyer or its agents on the Property, such notice to also describe the scope of the proposed testing, and (b) Buyer shall use reasonable efforts to conduct all such tests and studies so as to minimize disruption to the ongoing activities of any tenants at the Property. By no later than the Closing Date, Buyer shall notify Seller and no other party (except as may be required of Buyer by any applicable Legal Requirement) in writing if Buyer has discovered the presence of any Hazardous Substances in or about the Property. Buyer shall, at its expense, promptly repair any damage to the Property caused by Buyer and its agents to substantially the condition in which the Property existed immediately before such damage. Buyer shall hold harmless, and indemnify Seller and FRIT from and against all cost, loss, damage, liability, and expense (including, but not limited to, reasonable attorneys' fees) resulting from injuries to person or damage to tangible property caused by Buyer or its agents in connection with conducting Buyer's due diligence activities under this Contract; *provided, however*, that Buyer shall have no such obligation to the extent such cost, loss, damage, liability, or expense is due to any act of commission or omission of Seller or FRIT or its or their respective agents, employees, or contractors or due to the release of, or presence upon the Property of any Hazardous Substance. Nothing herein is to be construed as a waiver of governmental immunity and Buyer's combined liability both independent of and under this Contract for any claims shall be subject to and limited by the provision, type of liability and maximum amounts established in the Local Government Tort Claims Act, Section 5-301, *et seq.*, Courts and Judicial Proceedings Article of the Annotated Code of Maryland, as amended. Seller may not settle any claims or demands without Buyer's express written permission. Further, Seller and FRIT, as applicable, must give Buyer prompt notice of any claims or demands made upon them or of which they have actual knowledge. Failure to provide prompt notice to Buyer or settlement of any claim or demand shall cause this indemnification to be void and of no further force or effect as to the event for which the indemnification is sought.

4. TITLE AND SURVEY.

4.1 Title and Survey. Buyer acknowledges receipt of a title commitment from the Title Company, which commitment shall be Buyer's expense. Buyer also acknowledges receipt of the Survey and the Subdivision Plat.

4.2 No Liens. Between the Effective Date and the Closing Date, Seller shall not voluntarily (a) alter or otherwise encumber the status of title to the Property, or (b) create or cause or permit a Lien to attach to the Property other than the lien for taxes not yet due and payable. Seller shall discharge, bond off, or release on or before the Closing Date any Lien (i) so attaching, and (ii) that is a mortgage, deed of trust, judgment lien, mechanic's lien, tax lien, or similar lien against the Property that can be discharged by the payment of money; *provided, however*, that Seller shall have the right to bond off such Lien only if the Lien is being actively contested in good faith in a court of competent jurisdiction.

5. PURCHASE PRICE.

5.1 Payment of Purchase Price. Buyer shall pay the Purchase Price, as adjusted by the prorations and expenses to be paid by Seller hereunder, to Seller by making a wire transfer of immediately available federal funds representing the payment of the Purchase Price to the account of the Escrow Agent. The Escrow Agent shall then transmit the Purchase Price to Seller, as adjusted by the prorations and expenses to be paid by Seller hereunder.

6. CLOSING.

6.1 Possession. Seller shall deliver possession of the Property to Buyer at the time of Closing, subject to the Permitted Exceptions.

6.2 Conveyances and Deliveries at Closing.

6.2.1 Special Warranty Deed. At Closing, Seller shall deliver to the Title Company in escrow the special warranty deed in the form of Exhibit A that is intended to convey the Property to Buyer, subject only to the Permitted Exceptions waived or deemed to have been waived by Buyer under this Contract. On Seller's receipt of the Purchase Price, the Title Company shall immediately record the special warranty deed in the Land Records of Montgomery County, Maryland.

6.2.2 Non-Foreign Certificate. At Closing, Seller shall execute and deliver to Buyer a certificate with respect to Section 1445 of the Internal Revenue Code stating whether Seller is a foreign person as defined in Section 1445 and applicable regulations thereunder, which certificate shall be in the form of Exhibit B, and shall otherwise comply with all requirements under Section 1445 of the Internal Revenue Code and related provisions for sales of real property.

6.2.3 Closing Statement. At Closing, Seller and Buyer shall execute and deliver a Closing Statement that shall, among other items, set forth the Purchase Price, all

credits against the Purchase Price, the amounts of all prorations and other adjustments to the Purchase Price, and all disbursements made at Closing on behalf of Buyer and Seller.

6.2.4 Releases of Liens. At or before Closing, Seller shall pay or cause to be paid, released, or bonded off any Liens against the Property or any portion thereof; *provided, however*, that Seller shall have the right to bond off such Lien only if the Lien is being actively contested in good faith in a court of competent jurisdiction. Seller shall execute and deliver an "owner's affidavit" relating to the Property in the form attached hereto as **Exhibit D.**

6.2.5 Assignment. At Closing and as permitted by applicable law, Seller will assign to Buyer any rights and protections Seller receives from the State of Maryland in any No Further Requirements Determination relative to the Property.

6.3 Closing Prorations and Credits. At the Closing the following adjustments and prorations shall be computed as of the Closing Date and the Purchase Price shall be adjusted to reflect such adjustments and prorations.

6.3.1 Real Estate Taxes and Assessments. Any ad valorem real estate taxes for the Property for the current year shall be prorated as of Closing.

6.3.2 Reproration after Closing. All other charges and fees customarily prorated and adjusted in similar commercial transactions shall be prorated as of the Closing Date and thereafter assumed by Buyer. If accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable (as, for example, utility and real property tax bills), the parties shall prorate on the best available information (which, in the case of real property taxes, shall mean the most recent real property tax bill), subject to adjustment on receipt of the final bill or statement. Both Seller and Buyer shall use their diligent, reasonable, and good faith efforts to resolve such post-Closing prorations and other adjustments as expeditiously as possible; *provided, however*, that this provision shall survive Closing for a period of one hundred twenty (120) days, except in the case of the adjustment of the real estate taxes, in which case this provision shall survive only until the parties receive the pertinent real estate tax bill.

6.4 Seller's Closing Costs. Seller shall pay any prepayment costs and fees associated with any existing loan or similar arrangement secured by the Property; and the fees and expenses of Seller's own attorneys, consultants, and other professionals. Seller shall provide Buyer with a copy of the title commitment prepared in connection with Seller's purchase of the Tuesday Morning Lot and the redevelopment of the Rockville Town Square and shall pay all of the costs associated with preparation of the Survey.

6.5 Buyer's Closing Costs. Buyer shall pay the costs of any title examination necessary to bring title current from Seller's purchase of the Tuesday Morning Lot to Closing and premiums for the Title Policy; the costs of any other investigations, studies, and appraisals conducted by Buyer; and all recording charges due on recordation of any conveyancing documents executed in connection with this Contract.

6.6 Other Closing Costs. All other closing costs not specified in Sections 6.6 (Seller's Closing Costs) and 6.7 (Buyer's Closing Costs) above shall be paid by Buyer, as buyer, and Seller, as seller, in accordance with the local custom for transactions of this type in the Rockville, Maryland area.

7. SELLER'S COVENANTS.

Between the Effective Date and the Closing Date, Seller and FRIT shall comply with the following provisions:

7.1 Standard of Operation and Maintenance. Seller shall operate, manage, and maintain the Property in substantially the same manner as it has been operated by Seller before the Effective Date. Buyer acknowledges that Seller and its agents and contractors will be performing the Pad Work on the Property between the Effective Date and the Closing Date.

7.2 Representations and Warranties. Seller shall immediately notify Buyer if before the Closing Date Seller becomes aware of any material fact, transaction, event, or occurrence that could make any of the warranties, representations, and covenants of Seller under this Contract not materially true with the same force and effect as if made on or as of the Effective Date.

7.3 Permits and Approvals. Seller shall cooperate with Buyer as Buyer may reasonably require for the purpose of obtaining the requisite permits and approvals from the applicable Governmental Body for Buyer's intended use of the Property; *provided, however*, that Seller shall obtain, at no cost or expense to Buyer, the Permits required to perform the Pad Work. Seller shall execute all applications and instruments required in connection with the transfer of all Permits, to the extent transferable, to transfer the benefits of each Permit to Buyer.

7.4 Buildable Pad. Seller shall deliver the Property to Buyer at Closing with the Pad Work completed.

8. REPRESENTATIONS AND WARRANTIES OF SELLER.

For the purpose of inducing Buyer to enter into this Contract and to consummate the sale and purchase of the Property in accordance herewith, Seller represents and warrants to Buyer as to the following as of the Effective Date and as of the Closing Date, except where specific reference is made to another date or dates, in which case such date or dates will apply hereunder:

8.1 Authority of Seller. Seller is a body politic of the State of Maryland. Seller has the full right, power, and authority to sell and convey the Property to Buyer as provided in this Contract and to carry out Seller's obligations hereunder. All requisite actions of Seller necessary to authorize Seller to enter into this Contract and perform its obligations hereunder have been taken. The joinder of no person or entity other than Seller will be necessary to convey the Property fully and completely to Buyer at Closing.

8.2 Litigation Proceedings. There are no judgments unsatisfied against Seller or the Property or consent decrees or injunctions to which the Property is subject or to which Seller is subject that would adversely affect Seller's ability to convey the Property in accordance with the terms hereof. Except for a condemnation action by Seller against FRIT that affects the Property, there is no litigation or proceeding pending or, to Seller's actual knowledge, threatened against or relating to the Property. Seller shall give Buyer prompt written notice of any such litigation or proceeding instituted or, to Seller's actual knowledge, threatened, before Closing.

8.3 Bankruptcy. Seller has not (a) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (b) caused, suffered or consented to the appointment of a receiver, Buyer, administrator, conservator, liquidator, or similar official in any federal, state, or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets, or (c) made an assignment for the benefit of creditors.

8.4 Legal Requirements. Seller has not received written notice from any Governmental Body requiring the correction of any condition with respect to the Property, or any part thereof, by reason of a violation of any Legal Requirement or otherwise.

8.5 Compliance with Other Agreements. The execution and delivery of this Contract, the consummation of the transaction herein contemplated, and the compliance with the terms of this Contract will not conflict with, or with or without notice or the passage of time, or both, result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, loan agreement, or instrument to which Seller is a party or by which Seller or Seller's property is bound, any applicable Legal Requirement, or any judgment, order, or decree of any court having jurisdiction over Seller or Seller's properties.

8.6 Environmental. To Seller's actual knowledge, except as disclosed in the Environmental Reports delivered to Buyer and listed on Exhibit C attached hereto as a part hereof, no Hazardous Substances are located on, within, or about the Property except for legally permissible amounts utilized in the ordinary course of operating and maintaining the Property. Except for the No Further Requirements Determination letter dated as of April 23, 2004 relating to the Rockville Town Square I and Rockville Town Square II and any other communication regarding Seller's and FRIT's applications to the Maryland Department of the Environment, Voluntary Cleanup Program ("**VCP Applications**"), for parcels that include the site for construction of the County Library, Seller has not received any summons, citation, directive, letter, or other communication from any Governmental Body relating to Seller or the Property. Except for matters relating to the VCP Applications, to Seller's actual knowledge, there are no pending requests for information or inquiries from any Governmental Body or any investigations, actions, suits, claims, or proceedings relating to Hazardous Substances in or on the Property. Seller's obligation regarding Hazardous Substances is more specifically stated in the MOU.

8.7 Documents. To Seller's actual knowledge, Seller has not willfully or intentionally redacted or omitted any materials from the documents Seller has delivered or made available to Buyer in connection with this Contract.

8.8 Events Before Closing and Other Information; Survival. Seller will not take or cause to be taken or suffer any action that would cause any of the foregoing representations or warranties to be untrue as of the Closing in any material respect. Seller shall immediately notify Buyer in writing of any event or condition of which it has actual knowledge that will cause a change in the facts relating to, or the truth of, any of the above representations or warranties. Seller shall be entitled to modify the representations and warranties contained in this Section 8 that (a) arise in the ordinary course of the use and operation of the Property, and (b) as long as such modifications shall not, in Buyer's sole and absolute subjective discretion, adversely affect the use or value of the Property. The representations and warranties contained in this Section 8 are intended to survive the termination of this Contract or the Closing for a period of one (1) year. If any of the foregoing representations or warranties become untrue in any material respect by reason of no fault of Seller, Buyer's sole and exclusive remedy shall be either to (i) terminate this Contract, and Seller shall have no liability to Buyer by reason of any such breach, regardless of whether Buyer elects to terminate this Contract, or (ii) waive the breach, in which case both Seller and Buyer shall proceed to Closing in accordance with the terms hereof and Seller shall have no liability to Buyer by reason of any such breach, regardless of whether Buyer makes settlement hereunder; *provided, however*, that if any such representation or warranty is untrue as a result of the willful or intentional failure or refusal of Seller to perform and comply with the terms of this Contract to be performed or complied with by Seller on or before the Closing Date, then Buyer shall be entitled to its remedies on account of Seller's default, as more particularly set forth in Section 11.2 hereof. The term "knowledge," "actual knowledge," or "Seller's actual knowledge" as used herein shall refer to the actual knowledge of Arthur Chambers, with no duty of independent investigation or inquiry.

9. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer represents and warrants to Seller that each of the following representations and warranties is material and is true and correct as of the Effective Date and shall be true and correct at Closing:

9.1 Binding Contract. This Contract has been duly executed by or on behalf of Buyer by itself and is a valid and binding agreement on Buyer enforceable in accordance with its terms.

9.2 No Conflicting Agreements. There are no agreements binding on Buyer or its property that would be violated or breached by the execution or performance of this Contract for which a consent has not been obtained.

9.3 Authority of Buyer. Buyer is a political subdivision of the State of Maryland. Buyer has the full right, power, and authority to acquire the Property as provided in this Contract and to carry out Buyer's obligations hereunder. By the Closing Date, all requisite

actions of Buyer necessary to authorize Buyer to enter into this Contract and perform its obligations hereunder will have been taken.

9.4 Events Before Closing and Other Information; Survival. Buyer will not take or cause to be taken or suffer any action that would cause any of the foregoing representations or warranties to be untrue as of the Closing in any material respect. Buyer shall immediately notify Seller in writing of any event or condition of which it has actual knowledge that will cause a change in the facts relating to, or the truth of, any of the above representations or warranties. Buyer shall be entitled to modify the representations and warranties contained in this Section 9 that (a) arise in the ordinary course of the Buyer's business, and (b) as long as such modifications shall not, in Seller's sole and absolute subjective discretion, adversely affect the Buyer's ability to purchase the Property. The representations and warranties contained in this Section 9 are intended to survive the termination of this Contract or the Closing for a period of one (1) year. If any of the foregoing representations or warranties become untrue in any material respect by reason of no fault of Buyer, Seller's sole and exclusive remedy shall be either to (i) terminate this Contract, and Buyer shall have no liability to Seller by reason of any such breach, regardless of whether Seller elects to terminate this Contract, or (ii) waive the breach, in which case both Seller and Buyer shall proceed to Closing in accordance with the terms hereof and Buyer shall have no liability to Seller by reason of any such breach, regardless of whether Seller makes settlement hereunder; *provided, however*, that if any such representation or warranty is untrue as a result of the willful or intentional failure or refusal of Buyer to perform and comply with the terms of this Contract to be performed or complied with by Buyer on or before the Closing Date, then Seller shall be entitled to its remedies on account of Buyer's default, as more particularly set forth in Section 11.1 hereof. The term "knowledge," "actual knowledge," or "**Buyer's actual knowledge**" as used herein shall refer to the actual knowledge of Buyer's Chief Administrative Officer, with no duty of independent investigation or inquiry.

10. CONDITION TO CLOSING.

The obligation of the Buyer and Seller to consummate the Closing hereunder is further subject to the satisfaction at or before Closing (or earlier date if so specified herein) of the following condition precedent:

10.1 Accuracy of Representations (and of facts recited therein). All of the warranties, representations, and covenants of Seller and Buyer contained in this Contract shall be true and correct on the Closing Date with the same effect as if they had been made on the Closing Date and shall be reaffirmed by Seller and Buyer, respectively, in writing at the Closing, subject, however, to the operation of Section 8.8 and 9.4 (Events Before Closing and Other Information; Survival)]; and Seller and Buyer, respectively, shall have performed all covenants to have been performed and satisfied by Seller and Buyer in all material respects, respectively, before the Closing Date unless waived in writing.

10.2 INTENTIONALLY DELETED.

11. DEFAULT.

11.1 Buyer's Default Buyer and Seller each acknowledge that it would be difficult to ascertain the actual damages that would be suffered by Seller if Buyer defaults in consummating the purchase and sale contemplated by this Contract. Accordingly, if all conditions precedent to Buyer's obligation to consummate the transactions contemplated by this Contract have been satisfied or waived, but Buyer fails, refuses, or is unable to consummate the purchase and sale contemplated by this Contract, then Seller's sole and exclusive remedy shall be to terminate this Contract, this Contract shall terminate and thereupon Seller and Buyer shall be released from all further liability under this Contract except as otherwise provided in this Contract.

11.2 Seller's Default If Seller shall intentionally or willfully breach any of its representations, warranties, covenants, or agreements in connection with this Contract or fail to perform its covenants or agreements under this Contract, which breach or failure shall not have been cured within five (5) days after receipt by Seller of written notice thereof from Buyer, then in such event Buyer's sole and exclusive remedy on account of such breach or default shall be (a) to terminate this Contract, or (b) institute an action for specific performance of Seller's obligations hereunder. Except as provided herein, Buyer expressly waives all right of action against Seller for monetary damages of any sort including, without limitation, special, punitive or consequential damages for any matter arising out of or relating to this Contract. If by the Closing Date, Seller has failed without cause to complete the Pad Work, Buyer may require that the estimated cost of the uncompleted Pad Work be escrowed out of the Purchase Price and that such escrowed funds be used to pay for the costs of such work. Such escrowed amount shall be subject to the terms and conditions of a mutually acceptable escrow agreement among Seller, Buyer, and the Title Company.

11.3 Liability of Buyer and Seller.

11.3.1 Liability of Buyer. Except for obligations expressly assumed or agreed to be assumed by Buyer under this Contract, Buyer is not assuming any obligations of Seller or any liability for claims arising out of any act, omission, or occurrence that occurs, accrues, or arises on or before the Closing Date, and Seller hereby indemnifies and holds Buyer harmless from and against any and all claims, costs, penalties, damages, losses, liabilities, and expenses (including, but not limited to, reasonable attorneys' fees) that may at any time be incurred by Buyer as a result of acts, omissions, or occurrences relating to the performance of Seller's obligations under this Contract that occur, accrue, or arise on or before the Closing Date. The provisions of this Section 11.3.1 shall survive the Closing.

11.3.2 Liability of Seller. Seller is not assuming any obligations of Buyer or any liability for claims arising out of any act, omission, or occurrence that occurs, accrues, or arises on or after the Closing Date (other than as provided in this Contract), and Buyer hereby indemnifies and holds Seller harmless from and against any and all claims, costs, penalties, damages, losses, liabilities, and expenses (including, but not limited to, reasonable attorneys' fees) that may at any time be incurred by Seller as a result of acts, omissions, or occurrences relating to the performance of Buyer's obligations under this Contract that occur,

accrue, or arise on or after the Closing Date. The provisions of this Section 11.3.2 shall survive the Closing.

12. NOTICES.

Any notice, demand, consent, approval, request, or other communication or document to be provided hereunder to a party hereto shall be in writing and shall be given to such party at its address or telecopy number set forth below or such other address or telecopy number as such party may hereafter specify for that purpose by notice to the other party. Each such notice, request, or communication shall, for all purposes, be deemed given and received (a) if given by telecopy, when such telecopy is transmitted to the telecopy number specified below during normal business hours and confirmation of complete receipt is received during normal business hours, (b) if hand delivered against receipted copy, when the copy thereof is receipted, (c) if given by a recognized overnight delivery service, the day on which such notice, request, or other communication is actually received, or (d) if given by any other means or if given by certified mail, return receipt requested, postage prepaid, two (2) days after it is posted with the United States Postal Service, at the address specified below:

If to Seller: The Mayor and Council of Rockville, Maryland
Attention: City Clerk
111 Maryland Avenue
Rockville, Maryland 20850
Telephone No.: 301.309.3310
Telecopy No.: 240.453.9737

with concurrent copies to: Paul T. Glasgow, Esquire
Venable LLP
One Church Street
Suite 500
Rockville, Maryland 20850
Telephone No.: 301.217.5601
Telecopy No.: 301.217.5617

and

Kevin L. Shepherd, Esquire
Venable LLP
1800 Mercantile Bank and Trust Building
Two Hopkins Plaza
Baltimore, Maryland 21201-2978
Telephone No.: 410.244.7772
Telecopy No.: 410.244.7742

If to Buyer: Montgomery County Government
Office of the County Executive

Attention: Chief Administrative Officer
101 Monroe Street, Second Floor
Rockville, Maryland 20850

With a concurrent copy to: Montgomery County Government
Office of the County Attorney
Attention: County Attorney
101 Monroe Street, Third Floor
Rockville, Maryland 20850

If any notice is sent by telecopy, the transmitting party shall immediately thereafter mail to the other party, via first class mail, postage prepaid, a copy of such notice, request, or communication.

13. GENERAL PROVISIONS.

13.1 **Assignment.** Buyer may not assign or transfer or permit the assignment or transfer of its rights or obligations under this Contract without Seller's prior written consent, and any such assignment or transfer without such prior written consent hereby being declared null and void.

13.2 **Brokers.** Each party represents to the other that such party has not incurred any obligation to any broker or real estate agent with respect to the purchase or sale of the Property. Each of Seller and Buyer warrants and represents to the other that such party has employed (expressly or implied) no other broker or finder and has made no other agreement (express or implied) to pay any broker's commissions or finder's fees in connection with the transactions contemplated by this Contract. Each of Seller and Buyer agrees to indemnify and defend the other against and to hold the other harmless of and from all claims, demands, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees) for any commission or fee payable to or claimed by any broker or finder employed (expressly or impliedly) by it or with whom it made an agreement (express or implied) to pay a broker's commission or a finder's fee. The representations, warranties, undertakings, and indemnities of this Section shall survive the Closing hereunder and any termination of this Contract.

13.3 **Binding Effect.** This Contract shall be binding on each party hereto and such party's successors and assigns and shall inure to the benefit of each party hereto and such party's successors and permitted assigns.

13.4 **Entire Agreement.** Subject to the terms and conditions of the MOU, this Contract and all the exhibits referenced herein and annexed hereto contain the entire agreement of the parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any of the matters connected with this transaction shall be effective for any purpose. Except as may be otherwise provided herein, the agreements embodied herein may not be amended except by an agreement in writing signed by the parties hereto.

13.5 Time is of the Essence. TIME IS OF THE ESSENCE of the transaction contemplated by this Contract.

13.6 Governing Law. This Contract shall be governed by Maryland law, without regard to principles of conflicts of laws.

13.7 Survival. Except as to Seller's responsibilities under Sections 7.4 (Buildable Pad), 8.6 (Environmental), and 13.18 (Further Assurances), and any indemnifications provided by Seller in this Contract and as may be otherwise specifically provided for in this Contract, Seller's covenants, agreements, representations, indemnities, and warranties shall be merged into the Deed and other documents delivered at Closing. Except as to the requirements of Buyer under Section 13.18 (Further Assurances) and any indemnifications provided herein by Buyer, and as may be otherwise specifically provided for in this Contract or in the MOU, Buyer's covenants, agreement, representations, indemnities, and warranties shall be merged into the Deed and other documents delivered at Closing.

13.8 Further Assurances. Each party shall execute and deliver to the other such further documents or instruments as may be reasonable and necessary in furtherance of the performance of the terms, covenants, and conditions of and to carry out of the intent of this Contract. This covenant shall survive the Closing of this purchase and sale.

13.9 Exclusive Application. Nothing in this Contract is intended or shall be construed to confer on or to give to any person, firm, or corporation other than the parties hereto any right, remedy, or claim under or by reason of this Contract. All terms and conditions of this Contract shall be for the sole and exclusive benefit of the parties hereto and may not be assigned except as provided herein.

13.10 Partial Invalidity. If all or any portion of any of the provisions of this Contract shall be declared invalid by laws applicable thereto, then the performance of such offending provision shall be excused by the parties hereto; *provided, however*, that if the performance of such excused provision materially affects any aspect of this transaction, then the party hereto for whose benefit such excused provision was inserted in this Contract shall have the right, exercisable by written notice given to the other party within ten (10) days after such provision is so declared invalid, to terminate this Contract, whereupon this Contract shall terminate, and thereafter neither party hereto shall have any further rights, obligations, or liabilities hereunder except to the extent that any right, obligation, or liability set forth herein expressly survives termination of this Contract.

13.11 Interpretation. The titles, captions, and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit, or expand the scope or content of this Contract or any provision hereof. If any party to this Contract is made up of more than one person or entity, then all such persons and entities shall be included jointly and severally, even though the defined term for such party is used in the singular in this Contract. If any time period under this Contract ends on a day other than a Business Day, then the time period shall be extended until the next Business Day. This Contract shall be construed without

regard to any presumption or other rule requiring construction against the party causing this Contract to be drafted. If any words or phrases in this Contract shall have been stricken out or otherwise eliminated, regardless of whether any other words or phrases have been added, this Contract shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Contract and no implication or inference shall be drawn from the fact that such words or phrases were so stricken out or otherwise eliminated.

13.12 Counterparts. This Contract may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all of the parties to this Contract.

13.13 No Implied Waiver. Unless otherwise expressly provided herein, no waiver by Seller or Buyer of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to Seller or Buyer on any breach under this Contract shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller or Buyer of any breach of any term, covenant, or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant, or condition herein contained.

13.14 Rights Cumulative. All rights, powers, options, or remedies afforded to Seller or Buyer either hereunder or by law shall be cumulative and not alternative, and the exercise of one right, power, option, or remedy shall not bar other rights, powers, options, or remedies allowed herein or by law, unless expressly provided to the contrary herein.

13.15 Memorandum. Neither party hereto shall record this Contract.

13.16 JURY TRIAL WAIVER. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY AND AGREE THAT ANY DISPUTE ARISING UNDER THIS CONTRACT SHALL BE DECIDED SOLELY BY A JUDGE (WITHOUT THE USE OF A JURY) SITTING IN A COURT OF COMPETENT JURISDICTION. THIS JURY TRIAL WAIVER PROVISION SHALL SURVIVE THE CLOSING AND THE TERMINATION OF THIS CONTRACT.

13.17 "As Is". Except as expressly provided in this Contract, Buyer acknowledges and agrees that Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning, or with respect to (a) the value, nature, quality, or condition of the Property, including, without limitation, the water, soil, and geology, (b) the income to be derived from the Property, (c) the suitability of the Property for any and all activities and uses that Buyer may conduct thereon, (d) the compliance of or by the Property of its operation with any Legal

Requirements, (e) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Property, (f) the manner or quality of the construction or materials, if any, incorporated into the Property, (g) the manner, quality, state of repair, or lack of repair of the Property, or (h) any other matter with respect to the Property. Except as expressly set forth in this Contract, Seller has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders, or requirements, including the existence in or on the Property of Hazardous Substances. Buyer further acknowledges and agrees that (i) it has been given the opportunity to inspect the Property, and (ii) any information provided or to be provided about the Property was obtained from a variety of sources and that except as expressly provided herein, Seller has not made any independent investigation or verification of such information and except as expressly provided herein, makes no representations as to the accuracy or completeness of such information. Except as expressly provided herein, Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant, or other person. Buyer further acknowledges and agrees that except as expressly provided herein to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "as is" basis with all faults. The Purchase Price has been adjusted by prior negotiation to reflect that all of the Property is sold by Seller and purchased by Buyer subject to the foregoing. The provisions of this Section shall survive the settlement in perpetuity.

13.18 Mutual Cooperation. To the extent practicable, within thirty (30) Business Days following Seller's and Buyer's ("**Requesting Party**") request therefor, Seller (or anyone to whom it conveys an interest in land for the Project) and Buyer, as applicable (each a "**Responding Party**") with respect to its property within the Project, shall join in the recording of, and execute consents and approvals with respect to, and in form and substance reasonably acceptable to the Responding Party, easements and other instruments that may be reasonably required from time to time with respect to any improvement, alteration, use, development, operation, maintenance, repair or replacement of the improvements on Requesting Party's property within the Project; *provided however*, that no Responding Party shall be required to perform the obligations set forth herein in any particular instance if such Responding Party reasonably determines in good faith that the performance of such obligations in such particular instance would materially adversely affect such Responding Party's property or would materially adversely affect such Responding Party's use and enjoyment of its property or would cause additional unreimbursed expense to such Responding Party, or, for any area involving tax-exempt bonds, create a "private activity" issue in connection with such area. The Responding Party shall not be entitled to compensation for granting of any such request, and the Requesting Party shall be solely responsible for all of the costs and expenses of preparing and recording the any of the foregoing instruments. In addition to the foregoing, Seller acknowledges that Buyer will be constructing the Rockville Library at the same time as Seller or its assignees will be developing other property as part of the redevelopment of the Rockville Town Square project. Seller hereby covenants and agrees that it will provide Buyer and its contractors with unimpeded vehicular access to the Property (subject, however, to short-term temporary access restrictions to allow for the in and out flow of machinery and equipment, including machinery and equipment in connection with the Rockville Library, as is incident to normal daily construction activities)

and that it will cooperate and use its commercially reasonable efforts to cause others involved with the redevelopment of the Rockville Town Square and with whom Seller enters into a contractual relationship to cooperate with Buyer so as not to interfere unreasonably with the construction of the Rockville Library on the Property. Buyer and Seller acknowledge that the redevelopment of the Rockville Town Square will entail significant construction activity, and Seller and Buyer shall cooperate with the other to minimize disruptions to, or interference with, the construction activities of Seller and Buyer and their respective agents and contractors within the Rockville Town Square project. Buyer acknowledges and agrees that Seller plans to install public improvements on adjacent property and on the grounds of the Property. Buyer hereby consents to and approves the installation of other public improvements from time to time on the Property within the public portions of the sidewalk areas (e.g., benches, landscaping, and pavers) located or to be located within the Property.

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract and affixed their seals as of the day and year first above written with the specific intention of creating a document under seal.

WITNESS:

THE MAYOR AND COUNCIL OF ROCKVILLE,
MARYLAND

By: _____ (SEAL)
Catherine Tuck Parrish
Acting City Manager

MONTGOMERY COUNTY, MARYLAND

By: _____ (SEAL)
Name: _____
Title: _____

EXHIBIT A

Deed

DEED

THIS DEED, dated _____, 2004, from **THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND**, a body politic of the State of Maryland ("**Grantor**"), to **MONTGOMERY COUNTY, MARYLAND**, a political subdivision of the State of Maryland ("**Grantee**").

Grantor, in consideration of the payment of Two Million Four Hundred Eighty-Seven Thousand Six Hundred Fifty Dollars (\$2,487,650), grants, conveys, and assigns to Grantee, its successors and assigns, in fee simple, the real property located in Montgomery County, Maryland, and shown as LOT 21 on the Plat of Subdivision entitled "Lots 19, 21, 22 & Outlot A, and Parcel B, Block B and Street Dedication: North Maryland Avenue, City Center," which plat was recorded among the Land Records of Montgomery County, Maryland on June 15, 2004 in Plat Book No. 22892.

TOGETHER WITH all improvements thereon, and the rights, alleys, ways, waters, easements, privileges, appurtenances, and advantages belonging or appertaining thereto.

TO HAVE AND TO HOLD the Property hereby conveyed to Grantee, its successors and assigns, in fee simple, forever.

GRANTOR COVENANTS TO WARRANT SPECIALLY the property hereby conveyed, and to execute such further assurances of the property as may be requisite.

IN WITNESS WHEREOF, Grantor has executed this Deed as of the date first above written with the specific intention of creating a document under seal.

WITNESS:

THE MAYOR AND COUNCIL OF ROCKVILLE,
MARYLAND

By: _____(SEAL)
Catherine Tuck Parrish
Acting City Manager

STATE OF MARYLAND, COUNTY OF MONTGOMERY, to wit:

I HEREBY CERTIFY that on _____, 2004, before me, a Notary Public of the State of Maryland, personally appeared Catherine Tuck Parrish, who acknowledged herself to be the Acting City Manager of The Mayor and Council of Rockville, Maryland, and that she, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of such entity by herself as such Acting City Manager.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My commission expires: _____

CERTIFICATION

I HEREBY CERTIFY THAT I, the undersigned, an attorney at law who has been admitted to practice before the Maryland Court of Appeals, has prepared the within instrument.

Kevin L. Shepherd, Esquire

AFTER RECORDING, PLEASE RETURN TO:

Kevin L. Shepherd, Esquire
Venable LLP
1800 Mercantile Bank and Trust Building
Two Hopkins Plaza
Baltimore, Maryland 21201-2978

TAX I.D. NUMBER:

PROPERTY ADDRESS:

GRANTOR'S ADDRESS:

Mayor and Council of Rockville
Attention: City Clerk
111 Maryland Avenue
Rockville, Maryland 20850

GRANTEE'S ADDRESS:

Montgomery County Government
Office of the County Executive
Attention: County Administrative Officer
101 Monroe Street, Second Floor
Rockville, Maryland 20850

TITLE INSURER:

Commercial Title Group, Inc.
Attn: Barbara Blitz
8605 Westwood Center Drive
Suite 200
Vienna, Virginia 22182

EXHIBIT B
Non-Foreign Certificate (FIRPTA Affidavit)

CERTIFICATE OF NONFOREIGN STATUS
(Pursuant to I.R.C. § 1445 and Treas. Reg. § 1.1445-2)

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by **THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND** ("Seller"), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Seller's U.S. employer identification number is 52-6001573; and
3. Seller's office address is 111 Maryland Avenue, Rockville, MD 20852.

Seller understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and, to the best of my knowledge and belief, it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

WITNESS:

THE MAYOR AND COUNCIL OF ROCKVILLE,
MARYLAND

_____ By: _____ (SEAL)
Catherine Tuck Parrish
Acting City Manager

DATED: _____, 2004

EXHIBIT C
LIST OF ENVIRONMENTAL REPORTS

1. Environmental Site Assessment dated September 5, 1997 prepared by Apex Environmental, Inc.
2. Phase II Site Investigation dated October 9, 1997 prepared by Apex Environmental, Inc.
3. Supplemental Phase I Environmental Site Assessment, Rockville Town Square I, dated July 2003 prepared by Island Environmental, Inc.
4. Supplemental Phase I Environmental Site Assessment, Rockville Town Square II, dated July 2003 prepared by Island Environmental, Inc.
5. Limited Subsurface Investigation, East Middle Lane Parking Lot, dated June 2003 prepared by Island Environmental, Inc.
6. Phase I Environmental Site Assessment dated October 25, 2002 prepared by Law Engineering and Environmental Services, Inc.
7. Limited Subsurface Investigation dated February 13, 1997 by Apex Environmental, Inc.
8. Limited Subsurface Investigation, Rockville Town Square I and Rockville Town Square II, dated September 2003 prepared by Island Environmental, Inc.
9. No Further Requirements Determination letter dated as of April 23, 2004 relating to the Rockville Town Square I and Rockville Town Square II properties. Such properties consist of (a) a 5.695 acre parcel of land located at 225 North Washington Street in Rockville, Maryland (consisting of Tax Map Parcels GR32/N121, GR32/N175, GR32/N203, and GR32/N204), and (b) a 4.20 acre parcel of land consisting of Parcels #04-00149743, 04-03263772, 04-00151985 and the Maryland Avenue right of way between Beall Avenue and East Middle Lane).
10. No Further Requirements Determination letter dated as of February 23, 2004 relating to the Rockville Town Square II property.
11. Voluntary Cleanup Program Application/Inculpable Person Status letter dated April 20, 2004 relating to the Rockville Town Square II property.

EXHIBIT D
FORM OF OWNER'S AFFIDAVIT--BUYER

CTG File No. _____

State of Maryland,

County of Montgomery, to-wit:

The undersigned, being duly sworn according to law, deposes and says to the actual knowledge of its employee, Arthur D. Chambers, Owner's Director of Community Planning and Development Services for the last three (3) years:

1. The Mayor and Council of Rockville, Maryland, a municipal corporation of the State of Maryland, is the owner (the "**Owner**") of all that certain property described in that certain Commitment for Title Insurance No. 11580 (the "**Property**"), issued by Commercial Title Group, Inc. as issuing agent for Commonwealth Land Title Insurance Company ("**Underwriter**").

2. Except for a lease agreement between Owner and Magruder's of Md., Ltd., there are no other tenancies, leases, parties in possession or other occupancies of the Property and Magruder's of Md., Ltd. occupies the Property or has a right to such occupancy either as a tenant from month to month without lease or pursuant to the terms of an unrecorded lease. [**DELETE IF MAGRUDER'S VACATES THE CENTER BEFORE CLOSING**]

3. There are no unpaid bills or claim for labor or services performed or materials furnished or delivered during the last twelve (12) months for alterations, repair, work, or new construction on the Property requested by Owner or made on Owner's behalf.

This affidavit is given to induce Commercial Title Group, Inc. to issue title insurance policy as issuing agent for Underwriter with full knowledge that it will be relying upon the accuracy of same. The individual executing this affidavit shall have no personal liability hereunder or otherwise.

OWNER: The Mayor and Council of Rockville, Maryland

By: _____
Name: Catherine Tuck Parrish
Title: Acting City Manager

Subscribed and sworn to before me this _____ day of _____,
2004.

Notary Public

My Commission Expires: _____

PLAT NO. 2
87.397.31



MAYOR AND COUNCIL AGENDA

NO. 8(G) DEPT.: / Community Planning and Development Services DATE: July 26, 2004
Contact: Ryan McDavitt, Program Manager for Town Center

ACTION: Approval of modification to Public Improvements Contract (Phase II) to allow contractor to purchase concrete and reinforcing bars for Block 5 Garage

To: Whiting-Turner

Of: Baltimore, MD

	Pub. Imprv.	Pub. Grge.	Total
12Jul04	\$3,976,249	\$4,069,681	\$8,045,930
26Jul04	\$10,973,751	\$64,319	\$11,038,070
2Aug04	\$0	\$5,094,816	\$5,094,816
Sub-total	\$14,950,000	\$9,228,816	
Total	\$24,178,816		

For: Construction of Rockville Town Square

ACTION STATUS:

FOR THE MEETING OF: 8/2/04

INTRODUCED

PUB. HEARING

INSTRUCTIONS

APPROVED

EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER

SECTION

☐ CONSENT AGENDA

RECOMMENDATION: Staff recommends the modification to the Whiting-Turner contract in the amount of \$5,094,816 in a form approved by the City Attorney to provide construction services for the Rockville Town Square Project.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

Funding: Sufficient funding is available in Account No. 420-600-0A80-0426.

BACKGROUND:

The Mayor and City Council at the 12 July 2004 meeting, in order to maintain the project completion schedule and budget, approved Phase I of the construction site work for the Rockville Town Square Project. The construction started July 15, 2004. To achieve that schedule, the City of Rockville awarded a portion of the construction contract for the public improvements (\$3,976,249) and a portion of the garage construction (\$4,069,681), in the total amount of \$8,045,930. That award allowed Whiting-Turner to contract with the sub-contractors needed to perform initial site work.

The Mayor and City Council at the 26 July 2004 meeting, approved the modification of Whiting-Turner's contract in the amount of \$11,038,070 which covered the remaining scope of work for the Public Improvement contract in the amount of \$10,973,751, and an adjustment to the portion of the Public Garage contract that had been previously released in the amount of \$64,319. This action modified the total value of the Public Improvement Contract to \$19,084,000.

To maintain the construction schedule, and to realize a cost savings to the City of Rockville, Whiting-Turner needs to be released to purchase the concrete and reinforcing steel (rebar) for the block 5 garage. By doing so, Whiting-Turner can begin the procurement of materials, prepare and gain approval of structural shop drawings, and start physical construction in October 2004. Whiting-Turner has provided a proposal of \$5,094,816 for this added scope of work above the excavation previously released. If approved, the new total value of the Public Improvement contract will be \$24,178,816. Of that value, \$9,228,816 will be solely associated with the Public Garage project and will be transferred to the final contract for the garage construction when awarded this fall. The final GMP for the public garages is anticipated to be \$35 million.

Whiting-Turner's proposal is as follows:

Concrete and Rebar for Block 5 Garage	\$3,777,379
Concrete and Rebar for Retail transfer slab (City cost under GDA)	\$1,317,437
Total City Cost	\$5,094,816

Whiting-Turner also requires an additional \$484,660 for concrete and rebar solely associated with the residential cost of the garage. RD Rockville will provide these funds to Whiting-Turner.

City Staff also recommends approval to delete the current requirement to epoxy coat the rebar in pre-cast concrete structures. SK&A, the City's structural engineer of record for the Rockville Town Square project, has provided the attached letter stating that not using epoxy coated rebar is the common practice and will not adversely affect the structure.

It is anticipated that the Mayor and City Council may have to approve additional funds early this fall to maintain the construction schedule for the Block1-2 garage as well.

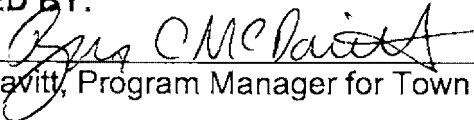
Sections 17-85 and 17-88 of the City Code allows the City to utilize a special procurement procedure if the Mayor and Council make a written determination that a unique or unusual circumstance exists that makes competitive procurement process contrary to the City's interest. There must be a written record of the reasons justifying the special procurement.

Therefore, approval of this agenda item will also include a finding by the Mayor and Council that the public/private nature of the Town Square project, the City's contractual obligations to comply with the

terms of the amended and restated GDA (approved June 2004), the October 2003 MOU between the City and County and the mixed use buildings create unique and/or unusual circumstances. These factors justify and the special procurement procedure by allowing the Town Square to be completed on time and the City of Rockville to realize a cost savings by achieving an economy of scale.

Approval of this modification to the contract will allow construction of block 5 garage to begin.

PREPARED BY:


Ryan McDavitt, Program Manager for Town Center

APPROVE:


Arthur D. Chambers, AICP, Director, CPDS

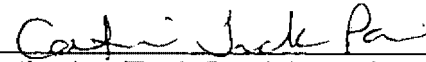
7/29/04
Date

APPROVE:


Eileen Morris, Contract Officer

7/29/04
Date

APPROVE:


Catherine Tuck Parrish, Acting City Manager

7/29/04
Date

LIST OF ATTACHMENTS:

- 1) Whiting-Turner proposal for Block 5 concrete and rebar dated 7/27/04
- 2) Letter of recommendation to delete epoxy coated rebar requirement from pre-cast concrete structures by SK&A Engineers dated July 20, 2004.

THE WHITING-TURNER CONTRACTING COMPANY(INCORPORATED)
ENGINEERS AND CONTRACTORSCONSTRUCTION MANAGEMENT
GENERAL CONTRACTING
DESIGN BUILD
SPECIALTY CONTRACTING
OFFICE/HEADQUARTERS
RETAIL/SHOPPING CENTERS
HEALTH CARE
BIO-TECH/PHARMACEUTICAL
HI-TECH/CLEAN ROOMHAMPTON PLAZA, 300 EAST JOPPA ROAD, TOWSON
BALTIMORE, MARYLAND 21286-3048
410-821-1100
FAX 410-821-5770
www.whiting-turner.comINSTITUTIONAL
DATA CENTERS
SPORTS AND ENTERTAINMENT
INDUSTRIAL
WAREHOUSE/DISTRIBUTION
MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES/CONCRETE

WRITER'S DIRECT NUMBER IS

301-309-9870

July 28, 2004

City of Rockville
111 Maryland Avenue
Rockville, MD 20850-2364

Attention: Ryan McDavitt, Program Manager

Rockville Town Square
Block 5 - Concrete Budgets

Dear Ryan,

The estimate for Block 5 Garage concrete and reinforcing bar is estimated at \$5.6 million dollars. The breakdown for Division 3 is as follows from the garage, retail and residential budgets:

Block 5 Garage Public - \$3,777,379
Retail Transfer - \$1,317,437
Residential Transfer - \$ 484,660

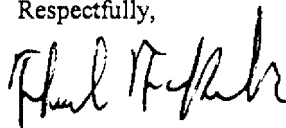
Total - \$5,579,476 (from foundations to Transfer Slab - no Hambro system/concrete)

Attached you will find the spreadsheet(s) for Block 5 division 3 - concrete with a line item cost of \$3,777,379.00 garage portion and \$1,317,437.00 for retail from the June preliminary budget(s). Even though we only show a portion of the cost going to the city we would still want to award a contract for the full \$5.6 million to get started in block 5. How we award for the full contract amount to get started has to be determined. Also, the retail and residential transfer slab only (no columns) cost is based on a 50/50 split.

Block 5 rebar tonnage estimate (1200 tons) @ \$1150 per ton = \$1.38 million

If you have any questions please contact at the above referenced phone number.

Respectfully,


Theodore F. Border
The Whiting-Turner Contracting Company

Attached: Division 3 Budgets (6/9/04)

**Rockville Town Square
Block 5 Parking Garage DD Budget**

Description	Quantity	Unit Type	Unit Cost	Budget Amount	Comments
Division 1 - Temporary Construction					
Construction Fence	0	LF	\$8.00	\$0	See Sitework Budget
Safety/ Barricades/ Cleanup	113,260	SF	\$0.50	\$56,630	
Trash Removal	113,260	SF	\$0.30	\$33,978	
Total Division 1				\$90,608	
Division 2 - Sitework					
Excavation	1	BID	\$1,059,250	\$1,059,250	From Sitework Bid
Sheeting & Shoring	1	BID	\$280,200.00	\$280,200	From Sitework Bid
Perimeter Drain	860	LF	\$10.00	\$8,600	
Dewatering	56,075	SF	\$0.60	\$33,645	
Fine Grading	6,230	SY	\$0.60	\$3,738	
Total Division 2				\$1,385,433	
Division 3 - Concrete					
Perimeter Footings - 4' x 1'	145	CY	\$331.00	\$47,995	
Spread Footings	1,275	CY	\$331.00	\$422,025	6000 PSF
Elevator Pit	30	CY	\$608.00	\$18,240	
Slab on Grade - 5" - B2 Level	1,070	CY	\$395.00	\$422,650	
Stone Sub-base - 4"					Included
Vapor Barrier - 6 Mil					Included
Exterior Foundation Walls - 12"	1,295	CY	\$748.00	\$968,660	
Interior Concrete Walls - 8"					Included
Interior Concrete Walls - 12"					Included
Parapet Wall - 12"					Included
Transformer Vault	0	CY	\$0.00	\$0	In Sitework Budget
Concrete Columns	350	CY	\$753.00	\$0	
Concrete Beams					In Slab Quantities
Elevated Slab:	4,155	CY	\$441.00	\$1,832,355	
B1 Level					Included 8" w/ 10'-0" SQ x 6" Drops
Level 1 at Retail					Included 8" w/ 10'-0" SQ x 8" Drops
Retail Slab Depression at Storefronts					Included 5-1/2" Deep x 5' Wide
Level 1 at Loading Dock					Included 12" w/ 10'-0" SQ x 10" Drops
12" Slab at Elevator					Included
Concrete Stair Fill	10	CY	\$625.00	\$6,250	
Concrete Trench Drain	1	EA	\$2,500.00	\$2,500	
Concrete Fill at Bollards	16	EA	\$100.00	\$1,600	
Wheel Stops	269	EA	\$30.00	\$8,070	
Wearing Slab	134	CY	\$351.00	\$47,034	
Total Division 3				\$3,777,379	
Division 4 - Masonry					
CMU at Stairwells/Elevators	8,150	SF	\$8.00	\$65,200	Garage Level Only
CMU at Elevator Machine Rooms	1,650	SF	\$8.00	\$13,200	Garage Level Only
CMU at Utility Room	1,720	SF	\$8.00	\$13,760	Garage Level Only
Ground Face CMU/ Back of House	13,520	SF	\$14.00	\$189,280	50% Garage/50% Retail
Total Division 4				\$281,440	
Division 5 - Metals					
Intake Vent Cover	3	EA	\$2,500.00	\$7,500	
Exhaust Vent Cover	3	EA	\$2,500.00	\$7,500	
Bollards	16	EA	\$300.00	\$4,800	
Miscellaneous Steel:					

Rockville Town Square Block 5 Retail Shell DD Budget

Description	Quantity	Unit Type	Unit Cost	Budget Amount	Comments
Division 1 - Temporary Construction					
Construction Fence	0	LF	\$8.00	\$0	See Sitework Budget
Safety/ Barricades/ Cleanup	45,844	SF	\$0.50	\$22,922	
Trash Removal	45,844	SF	\$0.30	\$13,753	
Tenant Trash Removal	0	ALLOW	\$0.00	\$0	Not Included
Total Division 1				\$36,675	
Division 2 - Sitework					
Not Applicable	0	LS	\$0.00	\$0	
Total Division 2				\$0	
Division 3 - Concrete					
Concrete Columns	303	CY	\$753.00	\$228,159	
Concrete Beams					In Slab Quantities
Mezzanine Transfer Slab	561	CY	\$220.50	\$123,701	50% Residential/ 50% Retail
Second Floor Transfer Slab					
12" w/ 11'-0" SQ x 10" Drops	1,637	CY	\$220.50	\$360,959	50% Residential/ 50% Retail
12" w/ 11'-0" SQ x 10" Drops - Ext. Deck	609	CY	\$441.00	\$268,569	100% Retail
Concrete Stair Fill	0	RISER	\$50.00	\$0	In Residential Shell
Continuous Footing - 2' x 1'	32	CY	\$331.00	\$10,592	
Spread Footings - F150 - 15'-0" SQ x 38"	765	CY	\$331.00	\$253,215	3000 PSF
Footing piers	13	CY	\$331.00	\$4,303	
Slab on Grade - 5" - Level 1	172	CY	\$395.00	\$67,940	
Stone Sub-base - 4"				Included	
Vapor Barrier - 6 Mil				Included	
Total Division 3				\$1,317,437	
Division 4 - Masonry					
Façade A:					
Brick Veneer - 1/3 Running Bond	440	SF	\$18.75	\$8,250	Endicott Desert Iron Spot
Cast Stone Soffit Assembly (18")	580	SF	\$28.00	\$16,240	Prairie Stone Buff
Façade B:					
Brick Veneer - Running Bond	450	SF	\$18.75	\$8,438	Belden Royalty Red w/ 43G Salmon Mortar
Brick Veneer - Basketweave	320	SF	\$25.20	\$8,064	Belden Royalty Red w/ 43G Salmon Mortar
Cast Stone Lintel	136	LF	\$70.75	\$9,622	
Cast Stone Base	56	LF	\$28.00	\$1,568	
Façade C:					
Cast Stone Soffit Assembly (18")	1,100	SF	\$28.00	\$30,800	Prairie Stone Buff
Large Masonry - Field	750	SF	\$33.50	\$25,125	Arriscraft Sage
Façade D:					
Brick Veneer - Running Bond	2,300	SF	\$18.00	\$41,400	Belden Bismark
Brick Veneer - Soldier Course	25	SF	\$21.20	\$530	Belden Bismark
Cast Stone Lintel	160	LF	\$135.00	\$21,600	
Cast Stone Base	75	SF	\$28.00	\$2,100	
Façade E:					
Large Masonry - Field - Clarendon	320	SF	\$30.12	\$9,638	Arriscraft Sage
Façade F:					
Large Masonry - Fine Arts Bond	380	SF	\$33.50	\$12,730	Arriscraft Taupe
Brick Veneer - Running Bond	0	SF		\$0	Belden Napier
Façade 1 & 2					

Rockville Town Square Block 5 Residential DD Budget

Description	Quantity	Unit Type	Unit Cost	Total	Comments
Division 1 - Temporary Construction					
Safety/Barricades	196,436	SF	\$0.20	\$39,287	15,237 sf more than 2/6
Final Cleanup	196,436	SF	\$0.20	\$39,287	15,237 sf more than 2/6
Rough Cleanup	196,436	SF	\$0.25	\$49,109	15,237 sf more than 2/6
Common Labor	196,436	SF	\$0.55	\$108,040	15,237 sf more than 2/6
Material Hoist	1	EA	\$25,000.00	\$25,000	
Trash Removal	196,436	SF	\$0.18	\$35,358	15,237 sf more than 2/6
Total Division 1				\$296,082	
Division 2 - Sitework					
Block 5 Terrace					
CMU Walls and Columns	2,720	SF	\$12.00	\$32,640	
Pre-Cast Architectural Cap	680	LF	\$40.00	\$27,200	
2' Steel Picket Fence	680	LF	\$25.00	\$17,000	
EIFS Cement Plaster	5,440	SF	\$8.00	\$43,520	
Pavers on Adjustable Pedestals	7,350	SF	\$12.00	\$88,200	
Waterproofing w/ Protection Board	7,350	SF	\$4.00	\$29,400	
Total Division 2				\$237,960	
Division 3 - Concrete					
Mezzanine Transfer Slab:	561	SF	\$220.50	\$123,701	50% Residential/ 50% Retail
Second Floor Transfer Slab:					
12" w/ 11'-0" SQ x 10" Drops	1,637	SF	\$220.50	\$360,959	50% Residential/ 50% Retail
Third Floor Concrete Slab - 12"		SF		\$0	
Concrete Beams:					
26" x 30"		CY	\$300.00	\$0	
36" x 36"		CY	\$300.00	\$0	
36" x 48"		CY	\$300.00	\$0	
Elevator Pit	4	EA	\$3,000.00	\$12,000	
Base price framing (option 1, Hambro with three-inch slabs)	152,696	SF	\$3.75	\$572,610	
Concrete fill for metal pan stairs	486	riser	\$33.00	\$16,038	
Cantilevered slabs for balconies	4,900	SF	\$5.00	\$24,500	
Total Division 3				\$1,109,807	
Division 4 - Masonry					
Façade A					
Brick Veneer					Endicott Desert Iron Spot
1/3 Running Bond	3,000	SF	\$18.75	\$56,250	
Cast Stone					Prairie Stone Buff
Decorative Vent	2	EA	\$350.00	\$700	
Arched header	40	LF	\$150.00	\$6,000	
Header	31	LF	\$41.00	\$1,271	
Lug Sill	80	LF	\$40.00	\$3,200	
Façade B					
Brick Veneer					Belden Royalty Red w/ 43G Salmon Mortar
Running Bond	9,700	SF	\$18.75	\$181,875	
Soldier Course	3,450	LF	\$22.00	\$75,900	
Flush Basket Weave	2,000	SF	\$25.20	\$50,400	
Cast Stone					
Cap	76	LF	\$85.00	\$6,460	
Cornice	75	LF	\$150.00	\$11,250	
False Chimney Cap	3	EA	\$350.00	\$1,050	
Arch	60	LF	\$150.00	\$9,000	

Attachment 2



July 20, 2004

Mr. Buddy Woerner
Project Manager
WDG Architecture
1025 Connecticut Avenue, Suite 300
Washington, D.C. 20036

**Re: Use of Epoxy-Coated Reinforcing Steel
Rockville Town Square
Rockville, Maryland
SK&A Project No. 03-089**

Dear Buddy:

This letter addresses the use of epoxy-coated reinforcing bars in the various parking garages, loading docks, and other areas of the project that are directly or indirectly exposed to weather and/or vehicle-borne salts.

Use of epoxy-coated reinforcing bars, in conjunction with high-strength, low water/cement ratio concrete, increased concrete cover over reinforcing bars, and application of penetrating silane sealers, constitute the leading measures the use of which increases the longevity of poured-in-place reinforced concrete floors. Precast concrete, being cast under highly controlled conditions is generally deemed to be more resistant to surface penetration of water and salts; therefore, epoxy-coated bars are not normally used in precast floor components.

It is our practice to specify epoxy-coated top and bottom bars in exposed, poured-in-place concrete floors, but not in precast concrete garage floors.

However, there is some distinction between private and publicly owned garages, as the design of the latter is usually mandated by stringent durability-related requirements, imposed by the public agency that owns or operates the garage. For example, the Montgomery County Government's "Parking Garage Design Criteria", applicable to all County-owned or County-operated garages requires the use of epoxy-coated steel in all concrete structures, poured-in-place or precast. Being familiar with these requirements, I would expect that the City of Rockville might opt to follow suit.

Our recommendations with respect to the use of epoxy-coated reinforcing bars in this project are as follows:

1. Reinforcing steel for all poured-in-place concrete slabs and beams for garage floors and all decks exposed to weather (except for areas designated to receive traffic-bearing membrane or concrete wearing surface over membrane



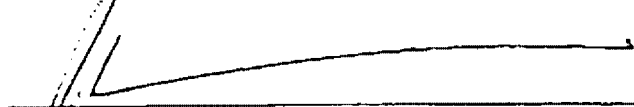
waterproofing), including dowels that extend into the floors from walls or columns, shall be epoxy-coated.

2. Reinforcing steel for concrete slabs that are to receive membrane waterproofing and concrete or other wearing surface will not be epoxy-coated. Reinforcing steel (typically wire mesh) in exposed concrete wearing surfaces or toppings should be galvanized or epoxy-coated, however.
3. Reinforcing bars for precast concrete floor components in the privately owned garages need not be epoxy-coated.
4. Reinforcing bars for precast concrete components in the publicly owned garages, need not be epoxy-coated, in our opinion, unless specifically requested by the City.

Please call me if there are any questions.

Sincerely,

SMISLOVA, KEHNEMUI & ASSOCIATES, P.A.



Azer Kehnemui, D.Sc., P.E.
Senior Principal

AK:ps

cc. Cetin Karabulut
Sunayana Ferrer
Rupa Patel



MAYOR AND COUNCIL AGENDA

NO. 8(H)

DEPT.: / Community Planning and Development Services

DATE: July 26, 2004

Contact: Ryan McDavitt, Program Manager for Town Center

ACTION: Approval of Time and Material Contract for Geo-technical Engineering Services during construction of the Rockville Town Center

To: Environmental Consulting Services (ECS)

Of: Frederick, MD

Amount: Not to exceed \$50,000

For: Construction of Rockville Town Square

ACTION STATUS:

FOR THE MEETING OF: 8/2/04

INTRODUCED

PUB. HEARING

INSTRUCTIONS

APPROVED

EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER

SECTION

☒ **CONSENT AGENDA**

RECOMMENDATION: Staff recommends the award of a contract to Environmental Consulting Services in the amount Not to Exceed \$50,000 in a form approved by the City Attorney to provide Geo-technical Engineering Services during construction of the Rockville Town Square Project.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

Funding: Sufficient funding is available in Account No. 420-600-0A80-0426.

BACKGROUND: Environmental Consulting Services (ECS) has provided pre-construction services to the City of Rockville during the design of the Rockville Town Square. ECS will be providing construction phase services to the City of Rockville consisting of material testing and geo-technical engineering.

Due to the complexity of the project ECS will not have a lump sum proposal for another 60 days. Till that lump sum proposal is received and approved, ECS has provided a Time and Materials price list for services to be preformed from the start of construction until the award of the lump sum contract.

Staff recommends approval of a contract not to exceed \$50,000 for material testing and geo-technical services.

Sections 17-85 and 17-88 of the City Code allows the City to utilize a special procurement procedure if the Mayor and Council make a written determination that a unique or unusual circumstance exists that makes competitive procurement process contrary to the City's interest. There must be a written record of the reasons justifying the special procurement.

Therefore, approval of this agenda item will also include a finding by the Mayor and Council that the public/private nature of the Town Square project, the City's contractual obligations to comply with the

terms of the amended and restated GDA (approved June 2004), the October 2003 MOU between the City and County and the mixed use buildings create unique and/or unusual circumstances. These factors justify the special procurement procedure and will also allow the Town Square to be completed on time.

PREPARED BY:

Ryan McDavitt / ex
Ryan McDavitt, Program Manager for Town Center

APPROVE:

Arthur D. Chambers / ex
Arthur D. Chambers, AICP, Director, CPDS

7/28/04
Date

APPROVE:

Eileen Morris
Eileen Morris, Contract Officer

7/28/04
Date

APPROVE:

Catherine Tuck Parrish
Catherine Tuck Parrish, Acting City Manager

7/29/04
Date

LIST OF ATTACHMENTS:

- 1) ECS time and Material Proposal dated July 12, 2004

Attachment 1



ENGINEERING CONSULTING SERVICES, LTD.
 Geotechnical • Construction Materials • Environmental

July 9, 2004

Mr. Don Briggs
 Federal Realty Investment
 1626 East Jefferson Street
 Rockville, MD 20852-4041

ECS Proposal No. 13:2115-CP

Reference: Unit Rate Proposal for Construction Materials Observation and Testing
 Services, Rockville Town Center Library and Block 5, Rockville,
 Maryland.

Dear Mr. Briggs:

As requested, Engineering Consulting Services Ltd. (ECS, Ltd.) is pleased to present this unit rate proposal for providing materials testing and observation services for the Rockville Town Center Library and Block 5 in Rockville, Maryland. These unit rate prices will be the basis for our fixed cost price that will be determined after our meeting at a later date.

We propose to perform observations and testing at the rates provided on the attached fee schedule.

It is our belief that all required services have been included in our unit price list. We also provide a number of services not specifically outlined in this list. Should supplemental services be deemed necessary at a later date, they would be invoiced at the rate noted on the fee schedule in effect at that time, unless otherwise agreed upon in advance. All unit prices listed herein shall remain as stated throughout the project.

Invoices will be issued on a monthly basis and will provide a week by week breakdown of billing units, unless modified by request of the client. They are normally processed on or around the 10th of each month and represent costs incurred during the previous month. We request that payment be rendered within 30 days of receipt of the invoice. ECS reserves the right to assess a finance charge of 1.5% per month on the outstanding balance over 30 days.


Attached to this letter, and an integral part of our proposal, are our "General Conditions of Service". These conditions represent the current recommendations of the ASFE: Professional Firms Practicing in the Geosciences, the Consulting Engineers' Council, and the Geo-Institute of the American Society of Civil Engineers.

*Rockville Town Center Library & Block 5
Project Number 13-2113-CP
July 9, 2004
Page 2*

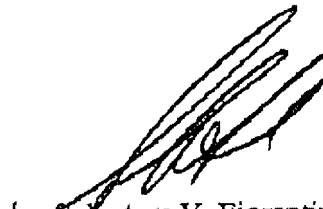
Your acceptance of this proposal for our services may be indicated by signing and returning the attached acceptance page to us. We are pleased to have this opportunity to offer our services and look forward to working with you on the project.

Respectfully,

ENGINEERING CONSULTING SERVICES, LTD.



Raymond M. Bradner
Project Engineer



Salvatore V. Fiorentino, P.E.
Vice President

Attachments:

1. Fee Schedule
2. Proposal Acceptance
3. General Conditions

\\FEILDSVC\PROPOSAL\2004\2100\13-2113 Rockville Tn Ctr Lib & Blk 5.doc

Rockville Town Center Library & Block 3
 Project Number 13-2115-CP
 July 9, 2004
 Page 3

FEE SCHEDULE

<u>UNIT RATE</u>	<u>BILLING CODE</u>	<u>RATE</u>
Lead Engineering Technician	1800	\$ 30.00/hour
Fireproofing Technician	8055	\$ 32.00/hour
Project Engineer	1300	\$ 70.00/hour
Principal Engineer	1100	\$110.00/hour
Structural Steel Technician	7002	\$ 60.00/hour
Roofing Technician	8200	\$ 50.00/hour
Technical Typist	1950	\$ 28.00/hour
Compressive Strength Testing:		
Concrete cylinders (ASTM C31)	6000	\$ 8.50/each
Grout Prisms	6020	\$ 15.00/each
Mortar Cubes	6030	\$ 10.00/each
Proctor Moisture Density Relationships (ASTM D-698)		
Standard Proctor Method	5004	\$ 110.00/test
Atterberg Limits Tests (ASTM D-4318)	4300	\$ 55.00/test
Grain Size Analysis (ASTM D-422)	4400	\$ 55.00/test
pH Content	4701	\$ 40.00/each
Organic Content	4700	\$ 40.00/each
Fireproofing Density Tests	8060	\$ 35.00/each
Fireproofing Pull-Off Tests	8070	\$ 25.00/each
Floor Flatness Testing (ASTM E-1158)	6062	\$300.00/1/2 day
Ultrasonic Equipment Fee	5001	\$ 25.00/day
Nuclear Density Gauge Fee	5000	\$ 15.00/day
Mileage	3350	\$ 0.40/mile
Cylinder Pick-Up	1807	\$ 25.00/each

Services will be rendered portal to portal from our Frederick, Maryland office. ECS, Ltd. unit rates are based on a 40-hour work week, Monday through Friday. Overtime in excess of 8 hours per day and any work on Saturdays, Sundays, or Holidays, will be invoiced at a rate of 1.5 times the normal hourly rate indicated above. Since our services are largely provided on an on-call basis, we cannot accept any responsibility for failing to observe and tests a specific area if proper notification has not been provided. Normally, the contractor is responsible for coordinating these services. The services provided by ECS, Ltd. in no way relieves the contractor of his responsibility to perform his work in accordance with the approved plans and specifications.



PROPOSAL ACCEPTANCE

Unit Rate Proposal No.: 13-2115

Scope of Work: Construction Materials Observation and
Testing Services

Project: Rockville Town Center Library and Block 5

Location: Rockville, Maryland

Client Signature: _____

Date of Acceptance: _____

Please complete and return this page to ECS, Ltd. To indicate acceptance of this proposal and to initiate work on the above-referenced project. The Client's signature above also indicates that he/she has read or has had the opportunity to read the accompanying General Conditions of Service and agrees to be bound by such General Conditions of Service.

BILLING INFORMATION

(Please Print or Type)

Name of Client: _____

Name of Contact Person: _____

Telephone No. Of Contact Person: _____

Party Responsible for Payment: _____

Company Name: _____

Person/Title: _____

Department: _____

Billing Address: _____

Telephone Number: _____

Fax Number: _____

Email Address: _____

ENGINEERING CONSULTING SERVICES, LTD. GENERAL CONDITIONS OF SERVICE

These General Conditions of Service, including any Supplemental Conditions of Service which are or may become applicable to the services to be provided in the Project, are incorporated by reference into the foregoing Proposal, and shall be part of the Agreement under which services are to be performed by ECS for Client. For the purpose of these General Conditions, "Agreement" shall mean the Proposal, these General Conditions, Supplemental Conditions (if any) and Fee Schedule.

SECTION 1: SCOPE OF WORK

- The scope of work shall include all services provided by ECS, in its discretion, which are reasonably necessary and appropriate for the effective and prompt fulfillment of ECS's obligations under the Agreement, including these General Conditions and any supplemental conditions incorporated herein; it being expressly provided that all such services provided shall be invoiced and paid for in accordance with Section 2 below.
- It is understood that the scope of work and time schedule defined in the Proposal are based on the information provided by Client. If the information is incomplete or inaccurate, or if unexpected conditions are discovered, the scope of work may change, even as the work is in progress. If the Client requests additional services or when a change in the scope of work or time schedule is necessary, a written amendment to the Agreement shall be executed by the Client and ECS as soon as it is practicable and consent to such amendments shall not be unreasonably withheld.

SECTION 2: CLIENT DISCLOSURES

- The Client shall notify ECS of any known or suspected hazardous substances, which are or may be related to the services to be provided. Such hazardous substances may include but not be limited to any substance which poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste or sample and whether it exists in a solid, liquid, semi-solid or gaseous form. This duty to notify ECS of any such hazardous substances shall also apply to any of the foregoing substances which ECS may be provided or obtain of which ECS or any agent or near any premises upon which services are to be performed by employees, agents or consultants of ECS. The Client shall notify ECS of all such hazardous substances of which it has knowledge or which it reasonably expects exist upon entering into this Agreement. Thereafter, disclosure and notification by ECS shall be required immediately upon discovery of any other hazardous substances or upon discovery of increased concentrations of previously disclosed substances where the increased concentration makes them hazardous.
- Following any disclosure as set forth in the preceding paragraph, or if any hazardous substances are discovered or reasonably suspected by ECS after its services are undertaken, ECS may, at its discretion, discontinue its services. Whether or not ECS discontinues its services in whole or in part, the Client and ECS agree that the scope of services, schedule and the estimated fee or budget shall be adjusted in accordance with the disclosed information or condition, and ECS may, at its discretion, terminate the Agreement. In the event that the Agreement is terminated pursuant to this Section, the Client shall pay ECS for services and all termination expenses as set forth in Section 4 of this Agreement.
- If all or any part of the scope of work is to be performed in the general vicinity of a facility or in an area where dust, fumes, gas, noise, vibrations or other particulate or non-particulate matter is in the atmosphere where it raises a potential health hazard or nuisance to those working in the area of such conditions, Client shall notify ECS of such condition, potential health hazard or nuisance and thereafter ECS shall take all necessary and reasonable measures to protect its employees against such potential health hazards or nuisance. The responsible direct cost of such measures shall be born by the Client.

SECTION 3: BILLINGS AND PAYMENTS

- Unless otherwise specifically provided in the Proposal or Agreement, billings will be based on actual work done at the standard rates shown on the attached fee schedule, travel cost and other expenses. Such billings shall not be limited by the estimate of total, incremental or phase project costs provided for information purposes in the Proposal. Client recognizes that time is of the essence with respect to payment of ECS's invoices, and that timely payment is a material part of the consideration of this Agreement. Client shall pay ECS for services performed in U.S. dollars upon ECS's invoice and in accordance with the rates and charges set forth herein. Invoices will be submitted by ECS from time to time, but no more frequently than every two weeks, and shall be due and payable upon receipt. If Client objects to all or any portion of an invoice, Client shall nevertheless timely pay the full amount of such invoice and Client shall notify ECS within fourteen (14) calendar days of the invoice date of the cause of disagreement and the portion of the invoice in dispute. Thereafter, ECS and the Client shall make good faith effort to resolve such dispute.
- Client shall pay an additional charge of interest of eight (8) percent (or the maximum percentage allowed by law, whichever is lower) of the unpaid amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoice amount in dispute and resolved in favor of Client. Payment thereafter shall not be applied to accrued interest and Client at the principal unpaid amount. Payment of invoices is in no case subject to unilateral discounting or set-off by Client.
- Application of the percentage rate indicated above as a consequence of Client late payments does not constitute any waiver on ECS's part to finance Client's operation, and no such waiver shall be implied. If Client fails to pay invoice amounts within thirty (30) calendar days of the date of the invoice, ECS may at any time, without notice, suspend or terminate this Agreement. Termination shall not relieve Client of its obligation to pay amounts incurred up to termination.
- The Client's obligation to pay for the services performed under this Agreement is in no way contingent upon Client's ability to obtain financing, writing approval of governmental or regulatory agencies, final satisfaction of a loan in which ECS is involved, or upon Client's successful completion of the project. No deferral shall be made from any invoice on account of pending, liquidated damages or other sums withheld from payments to ECS. It is agreed that all expenses incurred by ECS in carrying out this Agreement or in obtaining liens, obtaining judgments or enforcing any delinquent amount due, including reasonable attorney's fee shall be recoverable from the Client.
- The fees quoted in this contract shall remain valid for a period of twelve (12) months from the date of contract. Thereafter, they shall be adjusted in accordance with the Average Consumer Price Index (CPI) for the last twelve (12) months.

SECTION 4: RIGHT OF ENTRY

- Client hereby grants ECS and its subcontractors or agents the right to enter from time to time property owned by Client under either (a) in order for ECS to fulfill the scope of services included hereunder. Client understands that use of exploration equipment may cause some damage, the correction of which is not part of this Agreement. Client also understands that the discovery of certain hazardous conditions similar taking preventive measures relative to these conditions may result in a reduction of the Property's value. Accordingly, Client waives any claim against ECS and its subcontractors or agents, and agrees to defend, indemnify and hold ECS harmless from any claim or liability for injury or loss allegedly arising from procedures associated with subsurface exploration activities or discovery of hazardous materials or suspected hazardous materials. In addition, Client agrees to compensate ECS for any time spent or expenses incurred by ECS in defense of any such claim with compensation to be based upon ECS's prevailing fee schedule and expense reimbursement policy.
- ECS shall not be liable for damage or injury from damage to subsurface structures (pipes, tanks, valves, or other utilities, etc.) which are not called to ECS's attention in writing and correctly shown on the diagrams furnished by Client to ECS.

SECTION 5: SAMPLES

- Soil, rock, water and/or other samples obtained from the Project are the property of Client. ECS shall preserve such samples for no longer than thirty (30) calendar days after the issuance of any document that indicates the date obtained from them, unless other arrangements are mutually agreed upon in writing. Should any of these samples be contaminated by hazardous substances or suspected hazardous substances, it is Client's responsibility to select and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from ECS's custody and transporting them to a disposal site. Client is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures.
- Due to the risks to which ECS is exposed, Client agrees to waive any claim against ECS, and to defend, indemnify and hold ECS harmless from any claim or liability for injury or loss arising from handling, labeling, transporting, storing, or other handling of contaminated samples. Client also agrees to compensate ECS for any time spent and expenses incurred by ECS in defense of any

such claim, with such compensation to be based upon ECS's prevailing fee schedule and expense reimbursement policy.

SECTION 6: REPORTS AND OWNERSHIP OF DOCUMENTS

- ECS shall furnish three (3) copies of each report to Client. Additional copies shall be furnished at the rates specified in the fee schedule. With the exception of ECS Reports to Client, all documents, including original boring logs, field data, field notes, laboratory test data, calculations and estimates are and remain the property of ECS. Client agrees that all reports and other work furnished to the Client not paid for in full will be returned to ECS upon demand and will not be used for design, construction, permits or licensing.

SECTION 7: STANDARD OF CARE

- Services performed by ECS under this Agreement will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the engineering profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.
- Any exploration, testing, surveys and analysis associated with the work will be performed by ECS for the Client's sole use to fulfill the purpose of this Agreement and ECS is not responsible for interpretation by others of the information developed. The Client acknowledges that subsurface conditions beneath the Project site may vary from those anticipated in borings, surveys or exploration and the information and recommendations developed by ECS are based solely on the information available from such borings, surveys and explorations.

SECTION 8: LIMITATION OF PROFESSIONAL LIABILITY

- Client agrees to limit ECS's liability to Client and all extension contractors arising from ECS's professional acts, errors or omissions in performing this Agreement, such that the total aggregate liability of ECS in all cases shall not exceed \$50,000 or shall be the fee for the services rendered on this project, whichever is greater. Client further agrees to release the Client, General Contractor and its subcontractors from all liability of ECS's liability for damages that may be suffered by the contractor or the subcontractors arising from professional acts, errors or omissions of ECS.
- Documents, including but not limited to, technical reports, original boring logs, field data, field notes, laboratory test data, calculations, and estimates furnished to the Client or its agents pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Any reuse without ECS's written consent will be at Client's sole risk and without liability to ECS or to ECS's contractor(s) and Client shall indemnify and hold harmless ECS and ECS's contractors from all claims, damages, losses and expenses including attorneys fees arising out of or resulting therefrom.
- Under no circumstances shall ECS be liable for extra work or other consequences due to changed conditions or for costs related to failure of the construction contractor or maintenance or service providers to install work in accordance with the plans and specifications.

SECTION 9: LIABILITY INSURANCE

- ECS represents that it and its agents, and consultants employed by it, it and are protected by Workers Compensation Insurance and that ECS has coverage under liability insurance policies which ECS deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. ECS shall not be responsible for bodily injury and property damage or losses arising directly or indirectly, in whole or in part, from acts by the Client, its employees, agents, staff, consultants or subcontractors employed by it or by any other person or combination of persons. The Client agrees to limit the liability of ECS to the limits of ECS's insurance. The Client is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance, the cost of such inclusions or coverage increases, if available, to be at the expense of the Client.

SECTION 10: ARBITRATION OF DISPUTES

- All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement shall be decided through arbitration as adopted and described by the then most current rules of the American Arbitration Association. The parties agree that Client will require, as a condition for participation in the project and this Agreement to perform labor or services, that all Contractors, Subcontractors, Subsubcontractors and Materialmen, whose portion of the work amounts to five thousand dollars (\$5,000) or more, and their insurers and sureties, shall agree to this procedure.

SECTION 11: TERMINATION

- Client or ECS may terminate this Agreement for breach of this Agreement, or for any other reason which may arise. In the event of termination, the party offering termination shall, so notify the other party, and termination will become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party shall effect termination or the cause therefore, ECS shall promptly render to Client a final invoice and Client shall immediately reimburse ECS for services rendered and costs incurred, in accordance with ECS's prevailing fee schedule and expense reimbursement policy. Services shall include those rendered up to the time of termination, as well as those associated with termination itself, such as reworking, modifying schedule and resubmitting payment. Upon such termination, Client and ECS shall deliver to each other all reports and documents pertaining to services performed up to termination.

SECTION 12: SEVERABILITY

- Any provision of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

SECTION 13: TITLES

- The titles used in this Agreement are for general reference only and are not part of the Agreement. Parties to this Agreement are advised to read each provision and rely on the substance of legal counsel as necessary to help ensure a complete understanding of all provisions and the obligations imposed through acceptance.

SECTION 14: SURVIVAL

- All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Client and ECS shall survive the completion of services and the termination of this Agreement.

SECTION 15: ASSIGNS

- Neither the Client nor ECS may delegate, assign, subcontract or transfer to others, responsibility or increase in this Agreement without the written consent of the other party.

SECTION 16: CHOICE OF LAW

- This Agreement shall be interpreted according to the laws of the State in which the Project is located (but not including its choice of law rules).

END OF GENERAL CONDITIONS



MAYOR AND COUNCIL AGENDA

NO. 8(I) DEPT.: Legal /

DATE: July 29, 2004

ACTION: Approval of reciprocal easement agreement by and among the City, the RD Rockville entities and Foulger Pratt for the granting of certain reciprocal easements for the benefit of the Rockville Town Square Project and the Rockville Metro Center Project; and authorization for the Acting City Manager to execute the easement agreement on behalf of the City in a form acceptable to the City Attorney.

ACTION STATUS:

FOR THE MEETING OF: 8-2-04

INTRODUCED
PUB. HEARING
INSTRUCTIONS
APPROVED
EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER
SECTION

☒ CONSENT AGENDA

RECOMMENDATION: Approve easement agreement and authorize the Acting City Manager to execute said easement on behalf of the City in a form acceptable to the City Attorney.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: Foulger-Pratt will be granting an easement for the benefit of the City and the Rockville Town Square Project for truck egress along the boundary of Block 5 between East Middle Lane and the entrance to the Block 5 garage.

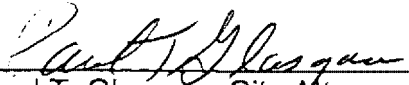
The City will be granting for the benefit of the Rockville Metro Center Project, a pedestrian and vehicular ingress and egress easement across Block 4, upon acquisition of Block 4 by the City, to provide access between Maryland Avenue and the Rockville Metro Center Project.

The City, RD Rockville, and Foulger-Pratt agree to grant reciprocal "tie back" easements for the construction of the parking garages in the project, and construction of future improvements on the Rockville Metro Center property, and permitting each party to obtain easements from the adjacent property owner for underground support.

The parties shall be granting to one another general easements to facilitate the development of both the Rockville Town Center Project and the Rockville Metro Center Project.

The easements will provide for the maintenance and repair of the easement areas and the future right to relocate such easement areas as may be necessary in connection with future development of the properties.

PREPARED BY:



Paul T. Glasgow, City Attorney

Date: 7/29/04

LIST OF ATTACHMENTS:



MAYOR AND COUNCIL AGENDA

NO. 8(J)

DEPT.: Legal /

DATE: July 30, 2004

ACTION: Approval of settlement agreement with and acquisition of the property of BP Products North America, Inc., at 360 Hungerford Drive, and authorization for the Acting City Manager to execute the settlement agreement and all documents necessary to effect the acquisition of the property.

ACTION STATUS:

FOR THE MEETING OF: 7/30/04

INTRODUCED
PUB. HEARING
INSTRUCTIONS
APPROVED
EFFECTIVE

ROCKVILLE CITY CODE,
CHAPTER
SECTION


☒ **CONSENT AGENDA**

RECOMMENDATION: Authorize the Acting City Manager to enter into a settlement agreement, in a form approved by the City Attorney, to settle the condemnation action by the City against BP Products North America, Inc. for the acquisition of the property at 360 Hungerford Drive in connection with the Town Center development and authorize the Acting City Manager to execute all documents, approved by the City Attorney, necessary to effect the settlement with BP Products North America and the acquisition of the property.

IMPACT: ☐ Environmental ☒ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND: The acquisition of the gasoline station owned by BP Products North America at 360 Hungerford Drive is part of the overall redevelopment of the Town Center. On August 4, 2003, the Mayor and Council adopted Resolution No. 27-03 authorizing and directing the City Manager and City Attorney to carry forward the necessary proceedings for the condemnation of the BP Amoco Service station. Pursuant to that authorization and direction, the City Attorney instituted condemnation proceedings for the acquisition of the BP Amoco property. The City and BP Products North America, the owner of the service station, have agreed to settle the condemnation action by the City which settlement agreement provides, among other things, for the acquisition of the property by the City for \$3,600,000.00.

PREPARED BY:



Paul T. Glasgow, City Attorney

7/30/04
Date

LIST OF ATTACHMENTS:

Settlement agreement

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter referred to as "Agreement"), is made as of the ____ day of _____, 2004, by and between BP PRODUCTS NORTH AMERICA, INC. (hereinafter referred to as "Owner"), and THE MAYOR AND COUNCIL OF ROCKVILLE, a municipal corporation in the State of Maryland (the "City"), who are individually or collectively referred to hereinafter as the "Party" or "Parties".

RECITALS:

A. As part of an effort to redevelop the town center of the City of Rockville, the City has initiated a condemnation action in the Circuit Court for Montgomery County, Maryland, styled The Mayor and Council of Rockville v. BP Products North America, Inc., et al., Case No. 244764 (the "Litigation"), whereby the City is seeking to condemn the entirety of the real property located at 360 Hungerford Drive, Rockville, Maryland, 20850 (the "Property") for certain public uses to be incorporated into the City's proposed Town Center development (the "Town Center Project"). Owner is the fee simple owner of the Property.

B. Owner has been engaged in negotiations and discussions with the City related to the Litigation, condemnation of the Property, and any other claims and entitlements Owner believes it has related to the Litigation and condemnation of the Property (collectively, all of the above being referred to as the "Owner's Claims").

C. Without admission of any obligation, liability or wrongdoing by either Party, Owner and the City desire to enter into this Agreement in order to amicably settle any and all of Owner's Claims, and provide for the acquisition of the Property, under threat of condemnation, by the City, upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are incorporated herein and made a part of this Agreement.

2. The Parties. References in this Agreement to Owner shall mean that entity or individual, as the case may be, as well as its past and present representatives, agents, employees, principals, partners, directors, officers, affiliates, shareholders, parent and subsidiary companies, successors, predecessors, assigns, attorneys and insurers (collectively, "Owner Affiliates"). References in this Agreement to the City shall mean that entity and its past and present representatives, agents, employees, public officials, their successors, predecessors, assigns, attorneys and insurers (collectively, "City Affiliates").

3. Payment. At the Closing (as defined below), the City shall pay to Owner an amount equal to Three Million Six Hundred Thousand Dollars (\$3,600,000) ("Payment") by having the Escrow Agent hereinafter designated make a wire transfer of immediately available Federal funds to an account designated in writing by the Owner. Payment shall be made at Closing on the Closing Date.

4. Closing. The settlement on the conveyance of the Property from the Owner to the City (the "Closing") shall occur at 10:00 a.m. Eastern time on Thursday, October 28, 2004, or on such earlier date as designated by the City upon fifteen (15) days written notice by the City to the Owner (the "Closing Date"). At Closing, the Owner shall execute and deliver to the City a Special Warranty Deed in the form of Exhibit "C" attached hereto and made a part hereof. Real estate taxes and other commercially customary prorations shall be made at the Closing. Owner shall pay any costs, fees and the balance that may be due on any existing loan or other obligation that is secured by the Property and the fees and expenses of Owner's own attorneys, consultants

and other professionals. The City shall pay the cost of any title examination, title report, title insurance premium, all recording charges due on recordation of any conveyancing documents. For ease of convenience, Closing shall be through escrow with the Escrow Agent (as defined below), with each of the Owner's and the City's deliveries being made no later than the times provided in this Agreement. The City and the Owner shall execute and deliver to the other a settlement statement prepared by the Escrow Agent and in form and substance reasonably acceptable to the City and the Owner. At Closing, the Owner shall execute and deliver such other documents and instruments necessary to effectuate a conveyance of the Property and the recordation of the Deed, including, but not limited to, any required withholding tax certifications. For purposes of this Agreement, "Escrow Agent" means Commercial Title Group, Inc., having an address at 8605 Westwood Center Drive, Suite 200, Vienna, Virginia 22182, Attn: Barbara Blitz. The Escrow Agent is the entity also issuing a policy of title insurance to the City. Between the date of this Agreement and the Closing Date, the Owner shall (a) not take any action, or allow any action to be taken, that adversely affects title to the Property, and (b) maintain, or cause to be maintained, the Property in the same manner in which it has been historically maintained. The City and the Owner hereby expressly acknowledge that (i) the City has threatened to acquire the Property by condemnation, and (ii) the sale hereunder is a sale under Section 1033 of the Internal Revenue Code.

5. Underground Storage Tanks. The City shall, at its sole cost and expense, remove the underground storage tanks on the Property subsequent to Closing.

6. The Litigation. Contemporaneously with the execution and delivery of this Agreement, Owner shall execute and deliver to the City an Amended Answer in the Litigation, that acknowledges and admits the City's authority and right to condemn the Property, acknowledges and admits that the acquisition of the Property by the City is for a public use or

public uses, affirmatively disavows any claim or entitlement to an award, payment, or compensation in the Litigation, or any payments related to the Litigation including, but not limited to, any additional payments, other than the payment provided for in this Agreement, affirmatively acknowledges and admits that it does not (and will not) object to, or oppose, or otherwise contest or challenge the condemnation by the City. The form of the Amended Answer is attached hereto and made a part hereof as Exhibit "A". In addition, the Parties shall execute and deliver a Consent Inquisition and Judgment, in the form of Exhibit "B", contemporaneously with the execution and delivery of this Agreement and Amended Answer.

7. Release. Owner, for itself and the Owner Affiliates, hereby releases, acquits, and forever discharges the City and the City Affiliates from any and all actions, suits, claims, demands, obligations, liabilities, guarantees, damages, costs, expenses, loss of use, loss of services, loss of profits, loss of goodwill, relocation and assistance payments, expenses and allowances, compensation, inquisitions, settlement sums, awards, payment obligations, or any other claim or cause of action whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, and whether in law or equity, including, without limitation, those arising out of or relating to the Litigation, condemnation of the Property by the City and Owner's Claims. Notwithstanding the foregoing, the foregoing release shall not, and shall not be deemed to, limit, impair, waive, release, satisfy, discharge or modify in any respect any of the City's obligations under this Agreement.

City, for its self and City affiliates, hereby release, acquits, and forever discharges the Owner and Owner Affiliates from any and all actions, suits, claims, demands, obligations, liabilities, guarantees, damages, costs, and expenses arising of and related to the Litigation and condemnation of the Property by the City. Notwithstanding the foregoing, the foregoing release

shall not, and shall not be deemed to, limit, impair, waive, release, satisfy, discharge or modify in any respect any of Owner's obligations under this Agreement.

8. Warranty and Covenant. Owner warrants and covenants that it has not filed and will not file any litigation or claim of any kind in any court against the City arising out of or relating to the Litigation and/or Owner's Claims and that this Agreement represents the full and final settlement of the Litigation and Owner's Claims.

9. No Admission of Liability. The execution of this Agreement does not represent an admission by any Party of any liability to the other Party for breach of contract, breach of warranty, tort, negligence, fraud, wrongdoing or liability of any sort or kind and any breach, wrongdoing or liability is expressly denied by the Parties.

10. Choice of Law; Binding Effect. This Agreement shall be construed in accordance with the laws of the State of Maryland. The Parties acknowledge that this is a jointly drafted Agreement. This Agreement shall not be construed in favor or against any Party on the basis of draftsmanship. The statements, representations, agreements and covenants contained herein are contractual in nature and are not mere recitations of fact, and the agreements and covenants herein shall be binding upon the Parties and their respective predecessors, successors and assigns, as described above.

11. Integration Clause; No Oral Modification. This Agreement contains the entire agreement between the Parties and is intended as a full and final expression of their settlement of all claims as set forth herein, and may not be modified, amended or terminated except by a written agreement specifically referring to this Agreement and signed by the Parties prior to the effective date of any such modification, amendment or termination.

12. No Prior Transfer. Owner represents and warrants to the City that there has been no transfer, assignment or gift of all or part of the claims, causes of action, injuries, losses,

damages or rights arising out of any of the Owner's Claims and that Owner holds all of the right, title and interest thereto. Each of the individuals signing for the Parties below represents and warrants that he/she has the full and complete authority to execute this Agreement on behalf of their respective Parties.

13. Authority. The Parties represent that they have reviewed this Agreement, have received the advice of independent legal counsel of their own choosing, that the individual signatories are authorized to sign and bind their respective Party, and that each is entering into this Agreement freely and voluntarily and after due thought and consideration of all of the relevant facts and circumstances.

14. Attorneys' Fees. The Parties each agree to pay their respective attorneys' fees, legal expenses and costs related to the Litigation and this Agreement. In any subsequent litigation between the Parties alleging breach, and seeking enforcement, of this Agreement, the prevailing Party shall be entitled to payment of all reasonable attorneys' fees and costs from the non-prevailing Party, both at trial and on appeal or petition for review.

15. Severability. If any provision of this Agreement, or application thereof, shall be held to be invalid, the invalidity shall not affect the other provisions of this Agreement to the extent that the other provisions can be given effect without the invalid provisions or applications and, to this end, the provisions of the Agreement are declared to be severable.

16. Seal. This Agreement is deemed to be executed under seal.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and shall be effective when both Parties have signed that counterpart.

18. Further Assurances. The Parties agree to execute and deliver such instruments and documents, diligently undertake such actions as may be required, and use good faith efforts to consummate the terms and conditions of this Agreement.

19. Successors and Assigns. This Agreement shall be binding upon the parties hereto, the Owner Affiliates, the City Affiliates, and their respective successors and assigns.

20. Prohibition Against Assignment. This Agreement may not be assigned by either party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

MAYOR AND COUNCIL OF ROCKVILLE

By: _____
Catherine Tuck Parrish
Acting City Manager

BP PRODUCTS NORTH AMERICA, INC.

By: _____ (SEAL)

Title: _____
360 Hungerford Drive
Rockville, Maryland 20850

EXHIBIT A

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MAYOR AND COUNCIL OF ROCKVILLE

Plaintiffs

v.

BP PRODUCTS NORTH
AMERICA, INC., et al.

Defendants

Civil Action No. 244764
Judge Durke G. Thompson

AMENDED ANSWER OF BP PRODUCTS NORTH AMERICA, INC.

Defendant, BP Products North America, Inc., (hereinafter referred to as “**Defendant**”) as and for its Amended Answer to the Complaint for Condemnation, states as follows.

Defendant and the Mayor and Council of Rockville (hereinafter "**City**") have entered into a certain Settlement Agreement and Release (the "Agreement") with respect to this litigation. In accordance with the Agreement reached between the parties, Defendant states that it does not object to or oppose the condemnation hereby sought by the City, disavows any claim or entitlement to an award or payment of any amount in this litigation, other than payments provided for in the Agreement between the parties. Defendant consents to the termination and extinguishment of its ownership in and on the Property, and the entry of the Consent Inquisition and Judgment as to its ownership of the Property.

WHEREFORE, Defendant consents to the entry of the Consent Inquisition and Judgment filed concurrently herewith and such other and further relief as may be just and proper.

Respectfully submitted

Roger D. Luchs
Greenstein, DeLormie & Luchs
1620 L Street, N.W., Suite 900
Washington, D.C. 20036
(202) 452-1400
*Attorneys for Defendant,
BP Products North America, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Amended Answer of BP Products North America, Inc., was served by first class mail, postage prepaid, on this ____ day of _____, 2004, on the following:

Jeffrey Axelson, Esquire
Van Grack, Axelson, Williamowsky,
Bender and Fishman, P.C.
110 N. Washington Street, 5th Floor
Rockville, Maryland 20850

Paul T. Glasgow

EXHIBIT B

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

THE MAYOR AND COUNCIL OF ROCKVILLE,	:	
	:	
Plaintiff	:	
	:	
v.	:	Civil No. 244764
	:	Judge Durke G. Thompson
BP PRODUCTS NORTH AMERICA, INC., et al.	:	
	:	
Defendants	:	

CONSENT INQUISITION AND JUDGMENT

Pursuant to Rule 12-208, the Court having been advised that the Plaintiff and the Defendant, BP Products North America, Inc. ("Defendant") have entered into a Settlement Agreement and Release wherein, inter alia, the Plaintiff and Defendant agreed, and consented to, the entry of this Inquisition by the Court for the condemnation of the proprietary interests, including the leasehold interest, of Defendant in and on the following described property (the "Property"):

Beginning for the same at the end of 102.38 feet on the second line of a conveyance to the First 240 Corporation, and recorded among the Land Records of Montgomery County, Maryland, in Liber 2160, at Folio 22, thence with part of the second line, all of the third and part of the fourth lines North 03° 42' 59" East 223.07 feet, thence along and binding to the proposed Beall Avenue North 57° 13' 02" East 205.76 feet to the Southwesterly side of Hungerford Drive; thence South 32° 46' 58" East 179.315 feet; thence leaving said Drive to include part of said land South 57° 13' 02" West 338.45 feet to the place of beginning; being parts of tracts of land called "EXCHANGE" and "NEW EXCHANGE", City of Rockville, Montgomery County, Maryland. The above described parcel containing 48,793 square feet of land.

It is this ____ day of _____, 2004, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that the ownership, and any other proprietary interests, of Defendant, BP Products North America, Inc., in the Property be, and the same are hereby, terminated and extinguished; and it is further,

ORDERED, that Defendant shall not be entitled to any award of damages, or payment of compensation, from the Plaintiff for the termination of its ownership interest, or any other proprietary interests, in the Property, except as provided for in the Settlement Agreement and Release between the Plaintiff and Defendant, and it is further,

ORDERED, that at such time as fee simple title is vested in the Plaintiff, it shall be vested free liens or encumbrances, or other proprietary interests, of Defendant in the Property; and it is further,

ORDERED, that the Court, having decided that the Plaintiff is entitled to condemn the ownership of Defendant in the Property, judgment is hereby entered for the Plaintiff, with respects to its claims against Defendant.

CONSENTED TO:

Paul T. Glasgow
Venable, LLP
One Church Street, Suite 500
Rockville, Maryland 20850
(301) 217-5601

*Attorney for Plaintiff,
Mayor and Council of Rockville*

Roger D. Luchs, Esquire
Greenstein, DeLorme & Luchs
1620 L Street, N.W., Suite 900
Washington, D.C. 20036
(202) 452-1400

*Attorney for Defendant,
BP Products North America, Inc.*

Durke G. Thompson, Judge of the Circuit Court
for Montgomery County, Maryland

EXHIBIT C
FORM OF SPECIAL WARRANTY DEED

SPECIAL WARRANTY DEED

THIS DEED ("this Deed"), dated as of October __, 2004, from **BP PRODUCTS NORTH AMERICA, INC.**, a _____ corporation ("**Grantor**"), to **THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND**, a municipal corporation of the State of Maryland company ("**Grantee**").

Grantor, in consideration of the payment of Three Million Six Hundred Thousand Dollars (\$3,600,000), grants, bargains, sells, conveys, and assigns to Grantee, its successors and assigns, to have and to hold in fee simple, the real property located in Montgomery County, Maryland, all as legally and more particularly described on **Rider 1** attached hereto as a part hereof.

TOGETHER WITH the rights, alleys, ways, waters, easements, privileges, appurtenances, and advantages belonging or appertaining thereto.

TO HAVE AND TO HOLD the Property hereby conveyed to Grantee, its successors and assigns, in fee simple, forever.

GRANTOR COVENANTS TO WARRANT SPECIALLY the property hereby conveyed, and to execute such further assurances of the property as may be requisite.

IN WITNESS WHEREOF, Grantor has executed this Deed as of the date first above written with the specific intention of creating a document under seal.

WITNESS: BP PRODUCTS NORTH AMERICA, INC.

By: _____[SEAL]
Name: _____
Title: _____

STATE OF _____, COUNTY OF _____, to wit:

I HEREBY CERTIFY that on October __, 2004, before me, a Notary Public of the State of _____, personally appeared _____, who acknowledged himself/herself to be the _____ President of Grantor, and that he/she, as such officer, being authorized so to do, executed the foregoing Deed for the purposes therein contained by signing, in my presence, the name of the Grantor by himself/herself as such officer, and certified that this conveyance is not part of a transaction in which there is a sale, lease, exchange, or other transfer of all or substantially all of the property and assets of the Grantor.

WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: _____

CERTIFICATION

I HEREBY CERTIFY THAT I, the undersigned, an attorney at law who has been admitted to practice before the Maryland Court of Appeals, has prepared the within instrument.

Kevin L. Shepherd, Esquire

TAX I.D. NUMBER: 00142230

AFTER RECORDING RETURN TO: Kevin L. Shepherd, Esquire
Venable LLP
1800 Mercantile Bank and Trust Building
Two Hopkins Plaza
Baltimore, Maryland 21201-2978

PROPERTY ADDRESS: 360 Hungerford Drive
Rockville, Maryland, 20850

GRANTOR'S ADDRESS: BP Products North America, Inc.
P.O. Box 1548
Warrenville, Illinois 60555-7548

GRANTEE'S ADDRESS: City of Rockville
Attention: Mr. Arthur D. Chambers
111 Maryland Avenue
Rockville, Maryland 20850

TITLE INSURER: Commercial Title Group, Inc.
Attn: Barbara Blitz
8605 Westwood Center Drive
Suite 200
Vienna, Virginia 22182

RIDER 1
PROPERTY DESCRIPTION

Beginning for the same at the end of 102.38 feet on the second line of a conveyance to the First 240 Corporation, and recorded among the Land Records of Montgomery County, Maryland, in Liber 2160, at Folio 22, thence with part of the second line, all of the third and part of the fourth lines North 03° 42' 59" East 223.07 feet, thence along and binding to the proposed Beall Avenue North 57° 13' 02" East 205.76 feet to the Southwesterly side of Hungerford Drive; thence South 32° 46' 58" East 179.315 feet; thence leaving said Drive to include part of said land South 57° 13' 02" West 338.45 feet to the place of beginning; being parts of tracts of land called "EXCHANGE" and "NEW EXCHANGE", City of Rockville, Montgomery County, Maryland. The above described parcel containing 48,793 square feet of land.

AFFIDAVIT AS TO TOTAL PAYMENT

The undersigned certify under the penalties of perjury, that the following is true to the best of my/our knowledge, information and belief, in accordance with Section 10-912(b)(2) of the Tax-General Article of the Annotated Code of Maryland (the "Withholding Law"):

1. That I am/we are the transferor(s), [or agent of the transferor(s) if so indicated], of that real property described in the accompanying deed.
2. The amount of total payment for the purpose of the Withholding Law is \$_____.

DATED this ____ day of October, 2004.

WITNESS:

TRANSFEROR:

BP PRODUCTS NORTH AMERICA, INC.

By: _____ [SEAL]

Name: _____

Title: _____